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The Montana Planning Board Members Handbook

Montana Department of Commerce
Local Government Assistance Division
Community Technical Assistance Program
February 1998

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The Montana Planning Board Members Handbook

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HANDBOOK FOR PLANNING BOARD MEMBERS

CHAPTER ONE

I. INTRODUCTION

So you have been appointed to serve on the planning board of your community. It is a big responsibility and perhaps you are apprehensive, maybe a little *nervous* about what you will be asked to do, or just what you have gotten yourself into. Relax. You will have plenty of help from other experienced members of the planning board and your staff. The public will help with their opinions and concerns. This handbook will help by providing you with information you need, and advice you might use to make your period with the planning board an interesting and rewarding experience.

What is a planning board? What is expected of you? You will need to know how to handle contentious situations involving the public, your staff and the governing body. You need to know your duties and responsibilities as a planning board member. There is a lot to learn, and that is why we prepared this book for you. You are doing a great service to your community, and we want you to enjoy your period of public service.

II. WHAT IS PLANNING?

Planning is an organized approach to determining community needs and setting goals and objectives to address those needs. Planning is concerned with the physical development of the community. It's goal is a community that is attractive, convenient, efficient, functional and safe. To be effective, planning must incorporate the social, economic and natural resource elements of the community. Planning helps give elected officials the necessary information to make important land-use decisions that will affect the future of the community. Planning can make sure that those decisions will benefit the community as a whole.

Perhaps the most important part of planning is ensuring public participation at every step of the process. The community should be involved early in the planning process and their involvement should continue throughout the planning process. Effective communication between citizens and their government is essential to guide the future development toward meeting the goals of the community. Through planning, citizens become more aware of community issues, and can more fully participate in decisions regarding the development of their community.

III. WHY PLAN?

Planning provides the forum for making rational public and private decisions affecting the physical development of a community. A community may be required by law to have planning in order to comply with certain state and federal laws, or to be eligible for state and federal grants.

With planning, communities can save tax dollars, insure adequate public services, preserve community values, and strengthen local economies. Without planning, development patterns are determined solely by developers; the interests of the community or lot buyers may not be represented. An unplanned community may never be as attractive, safe, functional or efficient as it should be.

A. THE GENERAL PUBLIC BENEFITS BECAUSE PLANNING CAN:

1. Reduce the cost of services to the taxpayer.
2. Encourage people to become involved in community activities, and acquire "ownership" of local issues and solutions.
3. Foster wise and thoughtful investments in major public facilities, such as roads, water and sewer systems, solid waste, and fire protection.
4. Make communities safer and heathier by encouraging well-designed streets, protecting water quality, and prohibiting development in unsuitable and unsafe areas such as flood plains, wetlands, fault zones and unstable slopes.
5. Promote adequate, affordable housing.
6. Provide parks and recreation facilities for all segments of the population.
7. Protect special community values, such as historic, cultural, scenic and natural features or rural agricultural character.
8. Build public consensus and greater understanding of development issues within the community.

B. PRIVATE INDIVIDUALS OR BUSINESSES BENEFIT BECAUSE PLANNING CAN:

1. Reduce private property taxes through more efficient public facilities and services.
2. Help make a community more attractive to investment by business and industry.
3. Prepare for anticipated growth, resulting in less costly extension of services and lower fees.
4. Maintain the property values of residential, commercial and industrial properties by preventing nearby incompatible or degrading uses.
5. Ensure that adequate amounts of suitable land are available for residential, commercial and industrial growth.

IV. PLANNING BOARDS IN MONTANA

Section 76-1-101, Montana Code Annotated (MCA) enables a county, a city, or a county and a city jointly, to create citizen-member planning boards. The purpose of the planning board, as authorized in Section 76-1-102, MCA, is to serve in an advisory capacity to the governing body in order **"to improve the present health, safety, convenience, and welfare of their citizens and to plan for the future development of their communities."**

Local governments in Montana are <u>not</u> required to have a planning board. However, a planning board <u>is</u> required when a local government wants to create a "master plan" (76-1-601, MCA). Planning boards are authorized to prepare and propose master plans, conduct public hearings on the proposed plan, and recommend adoption of master plans by governing bodies (76-1-601 through 76-1-603, MCA). A planning board must be established before local government may adopt or amend certain land use regulations, such as zoning regulations and development regulations.

The planning board serves the governing body by researching community development issues and recommending solutions to planning challenges. When a community has a comprehensive plan, the planning board reviews all proposed subdivisions and recommends approval or disapproval to the governing body (76-1-107, MCA). The planning board prepares and submits an annual budget for consideration by the governing body. The fiscal affairs of the planning board and the planning office are supervised by the planning board (76-1-401, MCA). The planning board may hire employees or consultants to provide technical assistance (76-1-306, MCA).

V. FOUR ACTIVITIES USEFUL TO A PLANNING BOARD MEMBER

Planning is a process, not a product. Planning is a never-ending sequence of actions involving the entire community. The goals and objectives of planning for your community change with circumstances and over time. The planning board in your community ten years ago worked with a different set of challenges than you will during your term and those who follow you will have challenges of their own. Four activities are helpful in meeting these challenges: ***<u>LEARN, LISTEN, TEACH, AND FACILITATE.</u>***

A. *<u>LEARN</u>*

To be effective, you must know as much as possible about your community, the people you serve and the responsibilities and duties of your office. Because planning involves taking an all-encompassing view of the community, the board member needs to learn how individual parts of the planning process affect community goals and objectives.

Much of learning is listening to what others think is important. Talk to the other board members. They are the best source of what happens on the planning board. Talk with your neighbors and friends. They can tell you what concerns them most about their community. Talk to members of the governing body and find out what they think are the challenges facing the community.

Much of learning is also research. Consult the applicable laws concerning the planning board. If you do not understand them, have the city or county attorney or planning staff explain them to you. Technical and legal assistance is available from the Montana Department of Commerce's Community Technical Assistance Program (CTAP) at 406-444-3757. Know the bylaws and the rules of order of the planning board. Observe an experienced board member for the first few meetings, until you understand how the board meeting is conducted. Most of all, do your homework. Be sure you get the necessary materials beforehand and review them before the meeting. To do a good job, you need to be informed.

B. *LISTEN*

To serve the public interest, a planning board must listen to the people of the community. A planning board hearing is not always the best setting for exploring public opinion on development issues. The board hearing is formal in nature, focused on specific projects, and often adversarial. To know what the people want, it helps to meet with them in an informal setting. The planning board should meet regularly with different groups to get their opinions about planning issues in the community. Informal meetings are useful for finding out what the people want from the planning board. Such meetings allow those opposed to planning efforts to express their opinions and helps the planning board address their concerns.

An Open House is an excellent opportunity to listen. The Open House should be advertised well in advance in the local press. The board members and staff can set up several tables, each concentrating on a different community planning issue -- Zoning, Open Space, Subdivisions, etc., and citizens could discuss informally with board members and among themselves those issues that concerns them the most. A planning board can interact with the public by setting up a table at local fairs, farmer's markets or other community events.

The planning board should be attentive and responsive to the public's concerns. Actively listening and focusing on concerns made by the public assures the community that their opinions are being addressed.

When gathering information about a particular challenge in the community or in a specific neighborhood, questionnaires or surveys are helpful. Questions raised at informal meetings can be used in questionnaires to reach a larger audience. Public gatherings, such as outside polling places during elections, or at fairs, celebrations and farmer's markets are excellent opportunities to use questionnaires effectively.

Also, the planning board should meet occasionally with the planning staff to identify what the staff believes are the short-range and long-range challenges the community faces. The planning board should regularly meet with the governing body.

C. *TEACH*

Teaching involves sharing with others what you have learned in your research and from what you have been told. Teaching helps explain what the planning board does and why it is needed in the community. A planning board should seek opportunities to spread the message of the value of planning to others. Perhaps some of those people will spread the "gospel" to others.

Formal and informal meetings with the public are excellent occasions to inform citizens about the challenges facing their community and how the planning board will address these challenges. The planning board should share information gathered at public meetings with the staff and governing body.

The planning board and its staff should not wait to be asked to make presentations to local community groups. Contact local community organizations and offer to speak at one of their meetings. The board and its staff can prepare one or more presentations which can be used at community meetings. Posters, blown-up photographs, slides, maps, and audiovisual tapes are useful visual aids for presentations.

The Community Technical Assistance Program in the Montana Department of Commerce can assist planning boards with advice on how to prepare a presentation and as a source of publications and tapes. Many CTAP publications are free or can be purchased at cost. CTAP also has a library of audiovisual tapes, and publications available on loan. A list of CTAP publications can be found in Appendix G.

D. *FACILITATE*

To expedite the flow of information between the local government (the staff and the governing body) and the people, the planning board should serve as a liaison. The board should make an effort to make available documents and publications that will help the public participate in the planning program. The governing body should be encouraged by the board to periodically attend planning board meetings. The governing body should be invited to attend informal meetings with the public, and those who do not attend should get a report about what went on at the informal public meetings.

The planning board may facilitate acceptance of their efforts through regular coverage by the local press. Keep local newspaper, radio and television news organizations informed about what it going on with the planning program. Get them involved in publishing articles about

upcoming meetings and covering the proceedings. The planning board president or other members may want to appear on local radio or television shows to discuss what is going on with the board and answer questions.

The planning board may facilitate informal discussion between opponents on a planning issue. Bringing together people with opposing views on an issue can be beneficial for explaining positions, finding commonalities and negotiating compromise. The planning board can also facilitate discussion about an issue between interest groups and local government. Such exchanges must observe legal requirements for open meetings and public notice.

CHAPTER TWO

I. ROLES AND RESPONSIBILITIES OF THE PLANNING BOARD

The planning board serves the governing body by advising it on planning and development issues, researching planning issues, recommending solutions to planning problems, and undertaking the development of comprehensive plans and land use regulations. (The Montana Code Annotated (MCA) uses the terms "master plan" and "comprehensive plan" interchangeably). A major function of planning boards is reviewing all proposed subdivisions and making recommendations to the governing body.

Planning boards serve as political buffers to diffuse criticism from the governing bodies, and provide public support to help local governments make important and controversial decisions.

Section 76-1-106, MCA states that the responsibility of the planning board is to prepare a master plan and to serve in an advisory capacity to the local governing body. This section further permits the planning board to propose policies for:

a. subdivisions and plats;
b. the development of public ways, public places, public structures, and public and private utilities;
c. the issuance of improvement location permits on platted and unplatted lands;
d. the laying out and development of public ways and services to platted and unplatted lands.

A. RESPONSIBILITIES OF THE PLANNING BOARD

1. Advise the local government on land use, development and conservation issues (76-1-102, MCA).

The planning board reviews and recommends for adoption by the governing body proposed decisions affecting or relating to comprehensive plans, zoning ordinances, subdivision controls, official maps and planned residential developments. The planning board serves in an advisory capacity. The power to make decisions necessary to carry out such policies belongs to the governing body.

2. **Prepare annually a work plan and a budget (76-1-305(4), 76-1-401, MCA).**

The planning board should prepare an annual work plan, outlining what the board expects to do in the coming year. Concurrent with the work plan, the board should prepare an annual budget, detailing anticipated expenses for the year. The planning board is responsible for supervising the fiscal affairs of the board and the planning office. Chapter Three details the preparation of a work plan. Chapter Four details the development of an annual budget.

3. **Exercise general supervision of, and make regulations for, the administration of the board (76-1-305, MCA).**

Every planning board should have written bylaws outlining the administrative duties of its officers. In Appendix A of this publication is an example of a generic set of bylaws that can be used as a model to draft a set of bylaws.

4. **Prescribe uniform rules concerning investigations and hearings (76-1-305, MCA).**

The planning board provides in-depth research and analysis that the governing body does not have time to do itself. To do so, the board must establish uniform procedures to collect necessary data and conduct investigations. All findings of fact by the board should be fair and legally defensible. Announcements for public hearings must follow the legal requirements as set by statute. The rules of order used in public hearings should be published in the bylaws, and available to all. Further description of rules of order and public hearings is found in Chapter 6, and Appendices A and D.

5. **Manage staff: prescribe the qualifications of , appoint, remove, and fix the compensation of the employees of the board, and delegate to employees authority to perform ministerial acts in all cases except where final action of the board is necessary (76-1-306, 76-1-307, MCA).**

The responsibility of recruiting, screening, hiring and directing the planning staff belongs to the planning board. The staff does much of the research, documentation and analysis that the planning board uses to make recommendations. The staff works for and reports to the planning board. The board should lead the planning staff and be explicit in what it expects from staff members. Planning board responsibilities for staff functions are covered in Chapter Five.

6. **Keep an accurate and complete record of all departmental proceedings; record and file all bonds and contracts and assume responsibility for the custody and preservation of all papers and documents of the board (76-1-305(3), MCA)**

Accurate record keeping is an essential aspect of planning board business. Minutes of every meeting must be taken. Copies are made and distributed to planning board members. Tape-recording meetings can be helpful, but tape recordings should be used only to verify records and minutes. Some attorneys discourage the use of tapes, as they can be used against the local government in court cases. The minutes of the previous meeting should be corrected and adopted by the board at the next meeting. Files should be kept of the minutes, correspondence and all materials submitted with applications. The board's bylaws should specify the method of record-keeping, the person responsible (usually the secretary, possibly with the assistance of the planning staff) and the day of the month that records must be completed. Reports and official records of a public planning agency must be open to the public.

7. **Prepare and implement a master plan and other policies, and submit them for consideration to the local government (76-1-106, MCA).**

Montana law requires a planning board to prepare a master plan and to present it to the governing body for their consideration. The master plan is a public guide to community decision making. It's an assessment of the community's needs, a statement of community values, goals and objectives. Therefore, the master plan should reflect most of the thoughts and efforts of many segments of the community. The master plan includes policies to guide future land development and conservation efforts in the community, and is a blueprint for community physical development.

A master plan contains such components as:

a. significant features of the physical environment and natural resources,
b. population and demographic data of the community,
c. location and description of existing and proposed land uses on a land-use map,
d. water and sewer systems,
e. existing and planned transportation systems,
f. existing and planned business, industry and job centers,
g. existing and planned public facilities and services,
h. existing housing stock, its conditions, cost and location,
i. community goals and objectives, and
j. policies to guide future land development and conservation efforts.

Once the master plan is adopted by the local government, the planning board implements the master plan through rules and regulations, proposed by the board and adopted by the local government. Such rules and regulations may include, but are not limited to zoning regulations, subdivision and plat review, impact fees, capital improvement programs, and other special plans. The master plan is expected to last 5 to 10 years, but may need to be updated periodically so it continues to reflect the goals of the community and the current patterns of change.

Appendix F explains the components, the goals, and objectives of a master plan, and how a master plan is prepared and implemented.

8. **Prepare, publish and distribute reports, maps, proposed ordinances and resolutions and other materials related to the activities of the board (76-1-305(5), MCA).**

Planning boards are responsible for directing the planning staff to prepare accurate and complete reports, maps and findings of facts, for their consideration. The planning board is responsible for preparing proposed ordinances and resolutions and submitting them to the governing body for consideration.

The planning board should prepare, with the assistance of the staff, an official map of the community and recommend its approval by the governing body. The official map is an important tool of planning that shows the location of present and proposed streets, water lines, sewer lines, treatment plants, schools, parks and other public facilities. The official map should be coordinated with the local government's capital improvement plan. The official map shows where infrastructure will be improved or expanded. It can be used to direct where development should occur by showing developers where improvements will be made in the future.

9. **Review and recommend action on subdivisions and plats.**

Subdivision review is an important function of the planning board. During subdivision review, the planning board may work with applicants during the pre-application and preliminary plat stages of the review process. All applications brought before the board must be examined to insure that the proposed subdivision is consistent with the adopted master plan, special plans and regulations.

During the Pre-Application phase, the board or staff may meet with the subdivider to discuss the requirements and procedures for review of the project and identify possible constraints for the proposed development.

The Preliminary Plat phase is the most important phase of subdivision approval process, because it allows the local government to require changes to the proposal or deny a proposal before the subdivider has made significant investment in time and money in developing the proposal. The planning board has the discretion to reject incomplete applications. After a complete preliminary plat application is submitted, the local government has 60 days in which to complete the review of the preliminary plat and decide to approve, conditionally approve or disapprove the plat. For the first minor subdivision from a tract, the local government has 35 days for review before taking final action. The subdivider may consent to an extension of the review period.

Local officials are required to hold a public hearing on the proposal within that 60-day period and must publish notice of the hearing in a newspaper of general circulation at least 15 days prior to the hearing. Adjacent property owners must be notified of the hearing by certified mail. Opinions and statements can be made orally or in writing at the public hearing. A local government cannot require a public hearing for the first minor subdivision from a tract.

The planning board is required to make a written recommendation to the local governing body within 10 days after the public hearing. The board recommends that the subdivision be approved, conditionally approved, or disapproved, basing its recommendation on the proposal's compliance with community plans and regulations. The planning board must provide a written "finding of facts" which documents the rational for its recommendations.

Appendix E explains subdivision regulation and review in greater detail. A digest of statutes concerning subdivision, *Montana's Subdivision Surveying Laws and Regulations, 17th Edition* is available from the CTAP.

10. Act as a zoning board

Larger communities and populous counties may have a separate zoning board. In most smaller communities in Montana, the planning board may also serve as a zoning board. In such cases, the agendas of the two boards should be kept separate. One solution is for the planning and zoning boards to meet on different days. If there is not enough agenda business to justify a separate meeting, the planning board may want to schedule zoning board business after adjourning the regular meeting.

H. Review conservation easements (76-6-206, MCA).

A conservation easement (76-6-101, MCA) is a voluntary legal agreement a landowner enters into to restrict the type and amount of development that may occur on the property. Such an easement ensures that the resource values will be protected indefinitely, regardless of who owns the land in the future. The landowner grants an easement to a public agency or to a qualified private tax-exempt organization. If the conservation easement meets federal requirements, property owners can be entitled to tax reductions. Each easement is different, tailored to the specific needs of the landowner, while assuring that conservation objectives are met. Conservation easements may prevent subdivision development; construction of new residential, commercial and industrial structures; activities resulting in soil erosion or water pollution; mining; and degradation of fish and wildlife habitat. Local governments can work with tax-exempt organizations, state agencies and property owners to promote and facilitate preservation of productive agricultural lands, or other lands. Under Montana law, the "local planning authority" is required to review conservation easements (76-6-206). Most local governments choose the planning board to review conservation easements.

B. RESPONSIBILITIES OF PLANNING BOARD OFFICERS

1. The President

- **a.** To preside at all meetings of the board.
- **b.** To call special meetings of the board in accordance with the bylaws.
- **c.** To sign documents of the board.
- **d.** To see that all actions of the board are properly taken.
- **e.** Keep all other board members informed of all business.

2. Vice-President

- **a.** During the absence, disability or disqualification of the President, the Vice President will exercise or perform all the duties and be subject to all the responsibilities of the President.

3. Secretary-Treasurer

- **a.** To keep the minutes of all board meetings.
- **b.** To give or serve all notices required by law.
- **c.** To prepare the agenda for all meetings of the board.
- **d.** To be the custodian of board records.
- **e.** To inform the board of correspondence.
- **f.** To handle funds allocated to the board.
- **g.** To sign official documents of the board
- **h.** The Secretary - Treasurer shall request that the Planning Director assist in carrying out these duties.

C. *FOURTEEN WAYS TO BUILD A BETTER PLANNING BOARD*

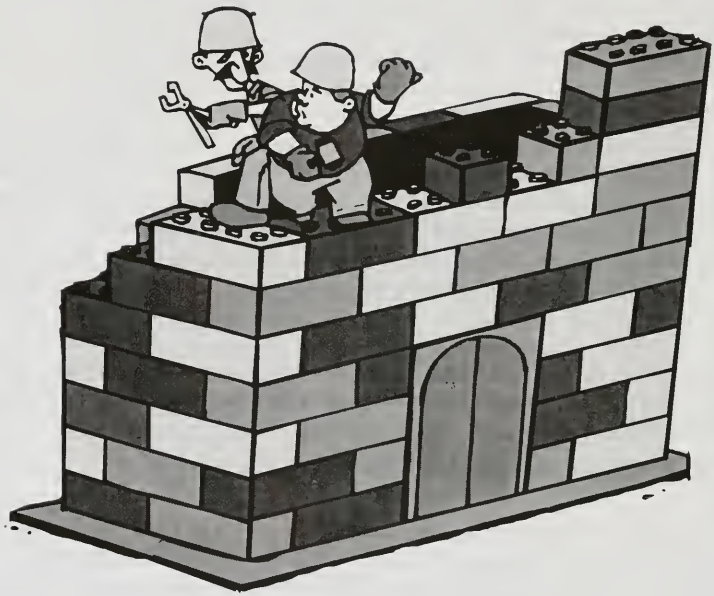
1. *Develop and adopt bylaws and procedures and stick to them.*
2. *Develop and make available to anyone who wants them good and reliable information, data, and maps.*
3. *Prepare and maintain an adequate general plan, refer to it, and make decisions that are consistent with its policies and also implement them.*
4. *Annually reexamine what you doing as a board, how well you are doing it, and how to do it better.*
5. *Outline a year's work on active planning and stick to it.*
6. *Prepare the planning agency's annual budget.*
7. *Meet periodically with your city council and/or county commission to exchange ideas and to assess your mutual objectives.*
8. *Consider a public forum every year or so. Ask people how things are going and what they want done.*
9. *Tell your staff what you want: how you want material presented to you, etc. Do not be a passive board that waits for "the experts" to tell you what to do next.*
10. *Attend some short courses on new planning techniques or the latest in land-use law, and expect your staff to do the same.*
11. *Conduct tours as a board to see what other planning boards are doing. Sometimes you will get some ideas worth borrowing.*
12. *Appoint a board representative to appear before the elected body when it is necessary or to sell an action. Don't expects the staff to do your job.*
13. *Lobby for good planning. If you do not, who will?*
14. *Take time to orient new board members to the job (Remember how tough it was to get the hang of it when you were a new member of your commission).*[1]

[1]Albert Solnit, *The Job of the Planning Commissioner*, Third Edition, Planners Press, Washington, D.C. and Chicago, IL, 1987, p. 41-42, citing a list created by the Institute for Education in Local Government, Berkeley, California.

D. RELATIONSHIP WITH OTHER AGENCIES

Because of the need to meet community goals and objectives and to coordinate actions by local government agencies, the planning board must build relationships with other local agencies. The planning board often finds itself working with other local agencies and district boards. The local parks and recreation board, conservation advisory board, and board of architectural review often contribute in the decisions of the planning board. The planning board, in turn, advises these other agencies in their deliberations. In most cases, this interrelationship remains advisory.

Planning agencies often work with county, state and federal agencies that influence requirements covering review and/or approval of selected development activities, providing advice and assistance to agencies in both their comprehensive planning programs and day-to-day activities. The Army Corps of Engineers, for example, has regulations and permit requirements dealing with construction in wetlands and riparian areas.



I. WORK PLANS AND ANNUAL REPORTS

The work plan and the annual report are two documents prepared by the planning board and the staff that are similar in form, but have different functions. The *work plan* is used by the planning board, its staff and the governing body to decide the planning budget for the coming year. The *annual report* is a report for the public explaining what the planning program did in the past year and what it expects to do in the coming year.

A. THE WORK PLAN

The work plan should be prepared by the planning board and its staff annually, and reviewed regularly throughout the year. The plan should provide the public, the board, the staff and elected officials with a description of proposed projects for the coming year and outline who is responsible for completing those projects. The work plan is important because it is reviewed by the governing body for administrative and funding purposes. Once adopted it will be the compass of the planning function for the coming year. It will also become a part of the board's annual report to the public.

The work plan should be as detailed as possible and tailored to the needs of the community. A plan should describe the projects, the need for the projects, who will be responsible for the completion of the projects and how the projects will be paid for. A more general work plan may be appropriate for a rural county or small city that is not experiencing great challenges with development. Communities with more complex problems will require a work plan that is longer and more detailed in its scope.

The work plan is not binding. It anticipates what is needed for the next year and serves as a guide to what the planning board and staff will do in the coming year. Some items may take on greater or lesser importance than anticipated as the year unfolds. Something unexpected may turn up in the coming year, as well. Because things do change, the plan should be reevaluated periodically during the year.

The work plan should be prepared by the planning staff with guidance from the board. Preparation of the work plan is not an activity that should be relegated to a few days or a few weeks once a year. If the planning board has been using ***listen***, ***learn***, ***teach***, and ***facilitate*** techniques throughout the year, then they will have a good understanding of what the citizens want the planning program to accomplish.

1. OUTLINE FOR A WORK PLAN

The following section is a suggested outline for the basic components of a work plan. A work plan should be tailor-made for the community and need not follow this format. Sometimes, the planning board may wish to combine the annual work plan and the annual budget into one document.

a. Introduction

The introduction should express the purpose of the annual work plan, and clearly explain the goals and objectives of the planning program. A statement on funding sources for the planning program might be included in the introduction.

b. Summary of the Previous Year

The summary of last year's accomplishments explains what business the planning board deals with every day, and helps set a pattern for what will come in the next year. The summary of last year's business might include: the number of Certificates of Survey (COS) processed, subdivision reviews, work on the master plan, grant applications prepared, planning board projects, administration of grant funds, changes and new equipment and technology in the planning office, public work contracts, hiring of new personnel, and miscellaneous projects.

c. Summary of Major Emphasis of the Coming Year

This section explains what the planning program will concentrate on in the coming year. The planning board may want to review assignments to special committees, or propose new committees. Statements in this section may emphasize preparing or working with a master plan, work begun in previous years and continuing into the coming year, and new projects. The administration of the planning office and any changes in the office might be explained.

d. Assignment of Responsibility

The work plan gives staff direction about what is expected of them. The work plan should include an explanation of the duties and responsibilities of the planning staff, and what staff will do in the coming year.

An example of a work plan can be found in Appendix B of this publication. The preparation of the annual work plan is an excellent opportunity to utilize ***learn***, ***listen***, ***teach***, and ***facilitate.*** The planning staff and planning board can assess how well the planning program is doing. Were the objectives of

last year's work plan met? Did they stay within the budget? How much input did they receive from the public and the governing body? Were their predictions accurate? The submission of the work plan permits the planning board and staff to ***listen*** to and ***learn*** about the governing body's concerns, and to ***teach*** the governing body and the public what they feel is important about the planning program in their community. The approved work plan ***facilitates*** the planning program by providing the planning board and staff with a blueprint for next year's effort, and a guide to judge their performance.

B. THE ANNUAL REPORT

The planning board is directed by statute (76-1-305, MCA) to prepare an annual report concerning the operation of the board and the status of planning in the community and to submit it to the governing body for consideration. An annual report serves as the planning board's status report and performance record. The primary purpose of the annual report is informing the public about the purposes and accomplishments of planning, the source of its authority and its overall role in the community. It keeps citizens up to date on the progress of projects and programs in their community. An annual report may also provide financial reporting data, changes in staffing or organization, and explain the department responsibilities.

It is crucial that the report is written to explain not only what was done in the planning program, but also why it was important for community improvement. For example, many citizens may not grasp why subdivision review is important to them or their community. The report should briefly explain the value and benefits of the various planning projects.

1. CONTENT OF THE ANNUAL REPORT

Annual reports have two main elements: the *greeting*, where introductory remarks are made, and the *body*, where the past year's activities are documented.

a. The Greeting

Often the reader reads only the introductory summary of the annual report. So it is important that all key facts are included in the greeting section. The greeting section may include:

(1). A letter of greeting to the reader from the planning board President,
(2). A list of the planning board members,

(3). A list of the planning office staff, including the address and telephone numbers for the office,
(4). The meeting schedule of the planning board,
(5). Financial information about the planning program,
(6). Explanation of any changes in programs or policies during the past year,
(7). Highlights of specific goals and plans for the coming year.

b. The Body

The body of the report can be divided into department activities and ongoing planning activities.

Development activities include:
(1). subdivisions and plat reviews,
(2). rezoning requests, variances,
(3). building permits, and
(4). site plans.

Planning activities include long-term projects such as :
(1). master plan updates,
(2). transportation plans,
(3). geographic information systems (GIS) mapping projects, and
(4). zoning plans,
(5). other special projects.

c. Style, Format And Production

An annual report is a communications tool and a public relations device that must capture the reader's attention and clearly deliver information about the planning program. The annual report should combine well-written text, quality photographs and illustrations, an appropriate format and eye-catching layout.

Before preparing the annual report, general decisions need to be made about the layout of the publications. The use of charts, tables and maps, the type of cover and binding to use, color inserts, tab dividers, or foldout maps will affect the production time and cost of the final product. Often the annual report is printed in the local newspaper as a full- or half-page advertisement or as a newspaper insert. By publishing the annual report in the newspaper, the planning board delivers the report directly into the homes of citizens.

The Internet can be used to convey annual report information. As more people integrate Internet use into their daily lives, the presentation of the annual report on the Internet makes sense. It allows quick and easy

distribution, can provide brief highlights, executive summaries or whole reports, and facilitates links to additional information about planning.

An example of an annual report can be found in Appendix C of this publication.

The work plan and the annual report help the planning board and its staff to evaluate how well the planning program is working. Reassessing accomplishments reveals the program's strengths and weaknesses. Input from the public and the governing body help shape the objectives of the coming year. The annual report is primarily a report to the public on the planning program and keeps the citizens involved and informed about their community.

CHAPTER FOUR

I. DEVELOPING AN ANNUAL BUDGET OF THE WORK PLAN

Planning is a continuous function and requires a regular and adequate budget. The planning board and its staff prepare an annual planning budget and submit it for review to the governing body. A planning board has the authority to expend, under regular procedures as provided by law, all sums appropriated to it for purposes and activities allowed by state statute (76-1-401, MCA).

The annual planning budget is part of the governing body's annual operating budget and is subject to review during a public hearing before it can be adopted by the governing body. The governing body, after public hearing, may amend the annual budget for the planning function before adopting it, or it may decide to reject the budget and request a new one be prepared.

A. PREPARING AN ANNUAL BUDGET

To prepare the budget, the planning board and the staff must decide what the proposed work plan for the coming year will cost. A good place to start is by examining the existing budget and work plan and adjusting for expected changes in costs, growth patterns, personnel and other considerations. Existing work plans and budgets can be used to estimate the number of hours the staff will spend on subdivision and plat review, variance applications, zoning requests, long-range planning and other tasks. The cost of projects being carried over from previous years will need to be figured into the new budget. The budget may include items not in the previous year's budget, such as new projects, additional personnel or consulting fees. The planning board may also need to consult census information to forecast growth patterns in the community for the coming years when considering next year's budget.

The most expensive items on the budget will be staff salaries. Salaries are often 60% to 90% of the planning budget. Besides salaries, the planning office needs funds for computers and software, publicity, publication of reports and maps, and preparation of exhibits and demonstrations. The planning program may also want to invest in a Geographic Information System (GIS) or another map or land inventory system. Such systems are costly, but can be invaluable tools.

An annual budget should include funds for training and professional conferences. The infusion of fresh ideas can benefit even a small planning program.

Planning board members serve without salary, but may be reimbursed from local funds for transportation and actual expenses up to but not exceeding state transportation reimbursement and allowable expenses for lodging, travel and meals incurred in attending planning meetings (2-18-501 *et seq.,* MCA).

B. FUNDING SOURCES

Under 76-1-402, MCA, the governing body of a community or county may appropriate funds to carry out the duties of the planning board. In the case of a city-county planning board, the governing bodies involved shall agree upon what proportion of the expenditures will be borne by each and appropriate the funds necessary for the respective shares.

Sources for funding a planning program include:
Mill levies for planning;
Fees charged for review of development proposals,
General Funds,
Formula Funds,
Planning grants.

1. MILL LEVIES FOR PLANNING

The Local Planning Enabling Act (76-1-101 through 76-1-606, MCA) authorizes municipalities and counties to levy property tax mills for planning. However, Initiative 105 (I-105) prohibits a local government from levying more property taxes than it levied in fiscal year 1996, unless the electorate approves the tax increase by election.

A mill levy override election may be called in those local governments that do not exceed the maximum mill levy by statute. A local government wishing to raise the mill levy to provide a critical service will need to prepare a ballot proposal and convince a majority of the voters to vote in favor of it.

Cities, towns and counties that already levy the maximum mills allowed by statute probably will not be able legally to levy additional mills for planning.

The maximum tax levy for county, and city-county planning board purposes is outlined in 76-1-405, MCA.

For a county of:	Taxable valuation of:	The maximum mill is:
The first class	$50 million or more	two (2) mills.
The second class	more than $30 million and less than $50 million	three (3) mills.
The third class	more than $20 million and less than $30 million	four (4) mills.
The fourth class	more than $15 million and less than $20 million	five (5) mills.
The fifth class	more than $10 million and less than $15 million	six (6) mills.
The sixth class	more than $5 million and less than $10 million	six (6) mills.
The seventh class	less than $5 million	six (6) mills.

The maximum tax levy for city planning board purposes is outlined in 76-1-407, MCA.

For a city of:	Population of:	The maximum mill is:
The first class	10,000 or greater	two (2) mills.
The second class	more than 5,000 and less than 10,000	three (3) mills.
The third class	less than 5,000 and more than 1,000	six mills.
A town	less than 1,000 and more than 300	six (6) mills.

New legislation enacted by the 1997 Legislature modified property taxation in regard to I-105 and the assessment of mills. Contact your governing body and financial staff for details on how these changes may affect collection of property taxes for planning in your area.

2. FEES FOR DEVELOPMENT PROPOSALS

Review of development proposals, such as applications for subdivision approval, zoning permits, variances or conditional use permits, consume time and require costs for such items as publishing notice of hearings and meetings. Planning offices can recoup some of the costs incurred by charging a reasonable fee for these reviews. Local subdivision and zoning regulations typically contain a fee schedule specifying the charges of each type of development proposal.

3. GENERAL FUNDS

Local governments may fund planning activities under their general fund. Revenues for general funds are based on property tax revenues.

4. FORMULA FUNDS

Many state and federal funds are earmarked for specific uses, but counties receive state and federal formula funds, such as payments-in-lieu-of-taxes (PILT), which may be used for any purpose. Because there are no restrictions on their use, PILT funds are often a feasible source of funding for a local planning program.

5. PLANNING GRANTS

a. *The County Land Planning Fund*

The County Land Planning Fund Program is funded from the Montana coal severance tax and administered by the Department of Commerce (DOC). The purpose of the grant program is to promote county planning. Each county will receive an equal portion of the total CLP Funds available up to $3,000 each. Any remaining funds will be distributed on a formula based on 40% of the ratio of each county's land area to the total land area of the state, and 60% on each county's portion of the total population of the state.

Section 90-1-108(3), MCA requires that every county must provide an accounting in a form acceptable to the Department of Commerce explaining how the funds from the County Land Planning Program were spent. After the end of the fiscal year, report forms are mailed to the county commissioners and to the county clerk and recorders. The forms are sent in July, and should be returned to Management Services, Department of Commerce, by September 30. An Annual Accounting Report must be filed annually by each county in order to account for the use of the funds as required under 90-1-108, MCA.

b. *United States Forest Service Grants*

The U.S. Forest Service has limited planning funds available for communities located within 100 miles of a national forest and having at least a 15 percent economic dependency on income derived from natural resource industries. These funds are provided under the Forest Service's Economic Diversification Program, and are allocated by competitive application for preparing economic development plans. Much economic development planning can be used to serve comprehensive planning purposes.

c. *Grants From Non-Traditional Sources*

With the decline in federal and state funding, planning programs are finding that funds for community development projects becoming more scarce. To supplement these funds, several of Montana's community planning departments have expressed interest in obtaining funding from "non-traditional sources" such as grants from private foundations. In response to inquiries by local governments, the Department of Commerce, Community Technical Assistance Program developed *A Guide to Grants for Community Planning and Development Projects in Montana.* The *Guide* will help city and county governments throughout Montana evaluate non-traditional funding sources for land use planning and community development projects.

Planning grants are limited to special projects and cannot be used for ongoing governmental activities, such as local subdivision review or administration. Some foundations will not make grants to city or county governments because they believe that tax supported agencies can generate adequate funds through taxation. One way of overcoming eligibility problems is to work with a local nonprofit community organization with 501(c)(3) status from the IRS. Such organizations are generally eligible to receive foundation grants. Acting as a conduit for the foundation grant, the nonprofit organization can receive the grant and use it for a community planning project.

Inquire about grant funding from local sources. Do not overlook the resources you have in your own community.

C. JUSTIFYING THE BUDGET: *LEARN, LISTEN, TEACH AND FACILITATE*

The planning board and staff can prepare a budget they believe represents the true cost of planning for the coming year, but it does no good if they cannot justify it to the public and the governing body during the review process. If the board has been utilizing ***learn, listen, teach*** and ***facilitate*** throughout the process of developing the work plan and budget, then the selling may be much easier. A planning board has to ***teach*** the public and the governing body why these expenses for planning are justified. A planning board needs to ***listen*** to what is being said during the review process and ***learn*** the limitations of the community's budget. Counties, cities, and towns in Montana often have severe budgetary restraints, and the planning program can be no larger than the planning budget. Once the budget for planning has been approved, the planning board must wisely administer the funds so community planning goals are satisfied.

CHAPTER FIVE

I. STAFFING

Good planning takes people - citizens to participate, a governing body and a planning board to direct planning activities, and planning staff to facilitate the process. The planning board is responsible for hiring and terminating planning staff, directing staff activities, setting guidelines for staff performance and evaluating staff performance. The planning board should work closely with the governing body and personnel department to manage staff functions efficiently and fairly. The planning office needs to coordinate its efforts with the public works, park and recreation, and health departments. If the town or county has a personnel office, it should be involved in the recruiting, hiring, disciplining or termination of planning staff. The governing body and the planning board need to work together to provide a planning program that meets the demands of the work plan and the desires of the citizens.

Government officials must be careful how they select job applicants and how they hire personnel. They must be careful how they promote, discipline and discharge employees. Careful and fair consideration must be given to job applicants and employees without regard to sex, race, age, disabilities and national origin; failure to assure equal opportunity in hiring exposes an agency to possible litigation. Written personnel procedures and documentation are necessary. Contact your personnel office for assistance or guidance.

A. ASSESSING STAFF NEEDS

A planning board needs to consider how well the planning program is providing needed services. Planning board members should spend at least one day in the planning office to see how the office works. Is there adequate staff to meet the needs of the work plan? Are subdivision and plat reviews being processed in a timely manner? Are there any special projects that may require the hiring of additional staff or a consulting firm? One question a planning board asks when making staff decisions is "How much staff do we need?" A related question is "How much staff can we afford?" Planning boards in rural counties and small towns may have very limited funds available to support a planning program.

Many rural counties and towns have planning boards but no full-time planners to serve the communities' needs. Several alternatives to hiring a full-time planner have been successful.

A community can recruit a person already in local government to work part-time as a planner. Sometimes that person is the zoning officer, the city clerk or the director of the

public works department. Some counties combine the position of county planner and country sanitarian. This arrangement can be advantageous for a community with limited resources, but there are disadvantages. Such a person usually has no formal training or experience in community planning. An employee who already has a full-time job may have neither the time or inclination to devote much effort to community planning.

Some cities and counties share a full-time planner, with each paying for part of the planner's salary and receiving part-time planning services.

Small communities sometimes contract with a private planning consulting firm to provide continuous planning services. The principal advantage is that a private planning consulting firm can often provide a variety of skills and services not possible with a single professional planner. Communities can also contract with a consulting firm to provide services for a specific planning project, such as preparation of a comprehensive plan or a street improvement project.

The principal advantage of hiring a professional planner as a permanent local government employee is that the staff member can devote all of his or her work time and skills to the planning program and the community. The staff member is familiar with the community and its needs, and has time to build contacts and trust. The principal disadvantage of staff is that it is a continuing expense, so the work load and cost need to be justifiable.

State agencies, such as the Department of Fish, Wildlife and Parks, and the Department of Environmental Quality, will help local governments in complying with state and federal regulations concerning water and air protection, wildlife conservation and human health. State agencies can offer advice on a particular subject, or direct a person to other state departments or agencies that may be of assistance.

The DOC Community Technical Assistance Program provides technical and legal assistance on planning statutes and requirements. The program can be helpful when a community is beginning a planning program, or when a community faces a special problem outside their staff's expertise. However, the state staff cannot provide the regular day-to-day services a community needs, and is not a substitute for having local planning staff.

B. RECRUITING

How does the planning board recruit the staff they need? Planning agencies tend to rely heavily on word of mouth and newspaper advertisements for recruiting staff. Jobs can also be advertised in government personnel bulletins and professional planning publications, such as *Western Planner* and *Planning*. The American Planning Association (APA) has a publication that advertises jobs (*Job Mart*). APA also provides other member services such as a National Conference Job Market and a Planner's Referral Service. The Internet is another source for advertising job openings, either on the town or county's homepage or on a planning homepage.

The following are key recruiting resources:

The Western Planner, Western Planning Resources, Steve Kurtz, Editor, Worthington, Lenhart and Carpenter, 200 Pronghorn St., Casper, Wy, 82601. Phone: (307) 266-2524. Website: (http://www.mrsc.org/paw/paw.htm).

Planning and *JobMart*, American Planning Association (APA), 112 S. Michigan Ave., Chicago, IL, 60603-9604. Phone: (312) 431-9100. APA/AICP Website: (http:www.planning.org).

A planning program in need of temporary assistance may want to use an internship program of a nearby university. The internship allows the planning department to receive affordable assistance on a specific project, while the student earns college credit and gains valuable work experience.

The job announcement for a staff position should contain a statement of the duties to be performed, and the expected qualifications of the candidates. Educational and experience requirements should be explicit. Starting salary, benefits and the closing date for application forms and the mailing address should be included in the notice. Applicants should be given at least three weeks to apply for a position after advertisements appear in newspapers or journals.

The review of job applications should be done by a selection committee, consisting of one or more members of the planning board, the governing body, and the personnel office (if there is one). To protect from possible litigation, it is important that the selection committee document in writing why certain candidates were chosen to be interviewed and why other candidates were not chosen.

After the planning board has identified those candidates they wish to interview for the position, the board should determine what questions to ask the applicants. Each candidate should be asked the same questions from a prepared list. The selection committee must take detailed notes of each interview. The committee must have written justification for their decision to hire or not to hire a candidate. The local government's personnel department can best inform the committee on the legal requirements and procedures to follow for the recruiting and selection process.

C. MANAGEMENT OF STAFF

By state statute, the planning board directs the staff and oversees the general management of the planning office. However, the planning board and the governing body should work closely in setting the standards of job performance for the staff and for evaluating staff performance.

A written job description for each position of the planning staff is recommended. The job description for a particular job should list the duties assigned to that job and the expected standards for successful performance of those job-related tasks. Job descriptions aid the staff by clearly defining the expected duties and standards for the job. Job descriptions aid the local government because they are a written record of what is expected of the worker and can be used for performance evaluations. Job descriptions should be created jointly by the planning director, the planning board, the governing body and the personnel department.

Staff performance should be evaluated at least once a year. Evaluations give the employer a chance to reiterate goals and performance standards, correct poor work habits, and reward good performance. Evaluations can help planners improve their work performance. Evaluations also protect both the employer and the planner should an employee be discharged. An agency that has documented poor work performance can more easily protect itself against accusations of unjust termination by a discharged employee. An employee who believes he or she has been unjustly terminated can defend this claim if a history of consistently good job evaluations has been documented.

The planning board's management of staff may include disciplining and even terminating staff members who fail to do their jobs adequately. A written set of performance standards helps staff know what is expected of them. For example, staff needs to know how the board expects staff reports to be prepared and presented, and told when their work is below that standard. Staff members should be disciplined in private and never in a public forum.

In cases where disciplinary action is required, the planning board must follow steps to assure the staff member receives due process. Due process is the principle that no one will be deprived of something of value (a job, a higher position or a paycheck) except as the result of a process that is fair and just. An employee has the right to a written statement of the charges, an opportunity to rebut the allegations, the right to a decision based on a full and fair investigation of the facts, and the right to appeal any disciplinary action to a higher authority.

A staff member should first receive a documented oral warning and be warned of the consequences of further disciplinary problems. A second infraction may require a written reprimand that includes the nature of the violation and the probable consequences (suspension or termination) if further disciplinary problems occur. If the staff member's work or attitude requires further action, then the planning board should consider suspension or termination of the staff member. The legal ramifications of suspension or termination are complex, so it is advisable that the planning board consult with the personnel department or legal counsel before beginning the disciplinary process. Management decisions are sometimes overturned by a judge or arbitrator because of a failure of supervisors to document each rule violation or observed performance problem and to follow up with counseling and/or disciplinary action in an appropriate manner.

Additional information about staff management can be found in *Personnel Practices in Planning Offices*, by Carolyn M. R. Kennedy, an APA Planning Advisory Service Report (PAS), No. 434.

II. WORKING WITH CONSULTANTS

Under certain circumstances, a planning board may need to contract outside help. A rural county may not have the funds to hire a full-time planner but may need to develop a comprehensive plan, a capital improvements plan or a transportation plan. Consultants can be very useful, particularly for those planning projects that the staff has not either the time or the specialized skills to complete.

The best way to use a planning consultant is as a supplement to the permanent staff, adding the consultant's expertise to the staff's general knowledge of the community and its problems. Because the consultant is an outsider, the planning board should work closely with the consultant and give direction, particularly regarding local attitudes. A planning board, for this reason, cannot delegate as much authority to a consultant as it would a resident staff planner.

The planning board should solicit consulting services by preparing a written Request For Proposals (RFP). The agency should prepare the RFP with great care. Consultants will decide whether to submit a proposal for a particular project based on the RFP. A well-written RFP helps the consultants prepare proposals that precisely address the project and realistically estimate the cost. The RFP should include a schedule for completion of the project and identify major project milestones.

Several consultants on the list should be sent a statement of the specific services needed. The consultants should be asked to submit a written proposal on how they would perform the requested services and provide a list of past clients.

Allow consultants 3 to 4 weeks to respond to a RFP. The RFP should include a statement of the deadline and the place for submission of the proposal and the number of copies required. Since proposals are often delivered by messenger or overnight delivery service, provide a street address (with the office number) as well as the agency's mailing address.

Assistance on how to prepare a RFP can be found in *Selecting and Retaining A Planning Consultant*, by Eric Damian Kelly, an APA PAS report (No. 443).

A. CHOOSING THE CONSULTANTS

When considering a consultant's proposal, contact three or four of the consultant's most recent clients and ask them about the performance of the consultant. Were the services completed to the satisfaction of the clients, or do they feel that they were left with a poorer product than they had reason to expect? Would they rehire the consultant to do more work? The selection committee should prepare a written selection criteria to fairly review and rank each consultant's proposal. The most promising two or three consultants should be called in for a face-to-face interview with a selection panel. The panel should include the planning

director, representatives of the planning board, the city council or county commission, and the chairperson of the citizen's study committee, if there is one. The interview should be with the person at the consulting firm who will be in charge of the project. The consultant should be asked what special qualifications the firm would bring to the task if their firm is hired.

The goal of the selection process is to get the consultant who comes through most clearly and who seems personally suited to working with your community. The consultant should also be questioned about how the work will be done for the project and what the final product will be.

Do not simply go with the consultant with the lowest proposal. A consultant should be chosen based on who will do the best job, not who will charge the least. The planning board can make inquiries with other jurisdictions to establish the cost range of the desired consulting services. A consultant should know the budgetary range he must work in before he prepares his proposal. The consultant should know at the selection interview what can be done for the available budget, or should be able to present a strong case why more funding is needed. Negotiations for the consultant's services and fees should occur after the consultant is selected but before he is under contract.

If the community has a planning staff, it is important that once the consultant leaves that the staff can work with the finished product and explain it to the public and local government. When the consultant's agreement is drawn, leave some money for services on a retainer basis so that he can help carry out the proposals. For communities without a staff, retention of the consultant after the work product is finished is essential.

Consulting firms can often offer specialized skills beyond the expertise of the general planner. Consulting firms usually have in-depth experience with various community planning problems and may employ a variety of skilled professionals. However, because of this variety of expertise, overhead and profit margin, consultants may be expensive. Other disadvantages to using consultants are: consultants may be difficult to supervise and reprimand, and consultants can impede the hiring of permanent planning staff.

CHAPTER SIX

I. PUBLIC MEETINGS AND PUBLIC HEARINGS

The planning board must meet regularly with the public to do an effective job representing the needs and desires of the community. The planning board should meet with the public both formally and informally. A *public hearing* is a formal and official meeting held to obtain public input on a proposal before the governing body makes its decision. Public hearings assure that those with business before the planning board receive due process. A *public meeting* is an informal gathering held to solicit citizen ideas and feelings about matters affecting the community. Public meetings help the planning board gather information crucial to its advisory role and permit citizens to express their concerns.

Because of the importance of the public meeting and the public hearing in the planning process, it is important that these processes are fair and efficient. These gatherings must be fair so that all who have a stake in the proceedings are properly notified of the meeting or hearing, and have the opportunity to express their views either orally or in writing. The proceedings must be efficient so that those who come to testify get the opportunity to be heard and those people with business before the board are not subjected to unreasonable delays.

The planning board needs to ensure that all members of the public, including those with physical and mental disabilities can participate in the planning process. The public has a right to expect that all public meetings and hearings will be accessible to all persons. Scheduling public meetings and hearings in facilities that are handicapped accessible is the best way to meet this requirement. In addition, public notice of the meeting or hearing could explain that special accommodations for the disabled can be made by request.

A. THE PUBLIC MEETING

Too often the only dialogue between planners and the community takes place during heated public hearings where people are forced into adversarial roles. The *me versus them* mentality resulting from a lack of communication and understanding benefits no one and can sabotage a well-meaning planning program or project. That is why it is important that the planning board and the public meet under conditions more conducive to discussion and understanding. The planning board should hold public meetings at least once a year, and more often, if possible.

Public meetings allow the planning board and staff to *listen* to the concerns of the people, *learn* what the community expects from the planning program and *teach* citizens what the planning program can and cannot do to meet their expectations.

The public has to know there is a meeting, where and when it will be, so advertising the meeting is essential. Take advantage of television, radio and newspaper public service announcements to stimulate public interest in a meeting. Speak to reporters about upcoming meetings. If a meeting will center on a proposal in a particular neighborhood, post flyers in that area to encourage participation.

Public events, such as fairs, farmers' markets and community picnics are excellent opportunities to set up a booth or table, manned by board members and staff, to field questions from the public. Consider asking people to complete a survey or sign up for the mailing list.

An alternative to a traditional public meeting is holding an Open House for several hours at the local library, fire station or other public place. An Open House allows residents the opportunity to come and go as they please and to spend whatever time they need to learn about the project or projects. The public can speak one-on-one with staff and board members and among themselves, and is particularly helpful in concentrating on specific elements of the proposal, rather than the general comments gotten at many public meetings.

At the public meeting, ***facilitate*** discussion. Create an atmosphere conducive to communication. Instead of a meeting with the board behind a table and the people in folding chairs in front of them, get out among them. Mill around in the crowd and talk like neighbors. Dress casually. Consider serving refreshments to convey a neighborly mood. Be sure to invite the key players in the community to attend. Let the community ask the questions, and, in return, show them what you do as planning board members, and why the action needs to be taken.

A good relationship with neighborhood and community organizations helps the planning board in the exercise of its duties. Valuable sources of information about community needs, desires and preferences, and information not otherwise available to the board about specific projects comes from such sources. The president of the planning board and staff members should pursue opportunities to speak to neighborhood associations, and service and business organizations in the community, whenever possible.

B. THE PUBLIC HEARING

Public hearings are formal and official hearings held to obtain public input on proposals before the governing body makes its decision. Because of the official nature of public hearings, certain requirements must be met concerning adequate notification, procedural rules and due process. Be sure to check the legal requirements for legal notification with the planning staff or the city or county attorney. The planning board must set the agenda well before the hearing and make it available to the public. During the hearing, the proceedings

must be conducted according to established and written rules of order, and decisions of the board need to be recorded.

The planning board must assure an open flow of ideas from all parties (applicants, the public and the board and staff). Procedural rules are especially helpful in guaranteeing both (1) the right of all parties to be fairly heard, and (2) the duty of the board to absolutely end public testimony in order to deliberate on proposals.

People need to know that the review process is directed by statute. Inform the people why board action is required and explain the process to the public (including the media) and applicants. Planners sometimes fail at explaining to the public in understandable terms the wherefore and the why of proposed actions.

1. BEFORE THE PUBLIC HEARING

The agenda of a public hearing should not be overloaded. Presentations by staff and applicants, public comment and board deliberation take time. People do not want to sit through a hearing, and find at the end of the hearing that the item that concerns them is being continued at the next hearing. The board should limit the number of items on the agenda of each hearing, so that business can be conducted in the allotted time. If there is a lot of business pending before the planning board, it may want to consider calling a special meeting to handle the backlog.

The public hearing should be carefully planned by the staff. Rooms should be reserved in a public building that provides handicapped accessibility. There should be adequate seating for the anticipated crowd. Before the hearing, the staff should check that the materials for presentations, slide projectors, screens and models are ready and can be viewed by planning board members and the audience.

Legal notices must be published far enough in advance to satisfy legal requirements and to allow for response to agenda items before the hearing date. Citizen groups need time to organize and prepare. Copies of the agenda should be made available. Have copies of staff reports available to interested parties before and during the hearing.

2. AT THE START OF THE HEARING

When the planning board meets officially for a public hearing, the board members should be thoroughly acquainted with the subject of the hearing. At the beginning of the hearing, the president should explain the rules of order used for the hearing. The president should declare an ending time for the hearing and a time for taking up the last new item before adjournment, e.g., if the board has a set adjournment time of 10 p.m., for example, then it might decide not to tackle any new items after 9:30 p.m. The agenda should reflect that a continuance will be called if the meeting runs too long. Keep in mind that some people who come to public hearings have work or

family obligations that preclude them from remaining late into the evening. Courts have ruled that public hearings cease to be public after a responsible hour in the evening.

When it is expected that many people will want to speak, a sign-up sheet is recommended, with people selected to speak in the order that they signed up. The president may also limit individual remarks to a specified time (three minutes, for example). In those cases when a continuance has been called and some people have already left, the sign up sheet can be used to contact them.

The president of the planning board should start the hearing on time. The president may begin by stating the reasons for hearing and explaining the rules of order for the hearing. Review, revise and reorder the agenda as necessary. Often, applications are withdrawn, requests for postponements are made, etc. Dealing with these at the outset of any meeting is extremely important so everyone knows what time each remaining agenda item may have. *Set clear time limits for each item on the agenda.*

3. DURING THE HEARING

The most important element to a successful hearing is the person who oversees the proceedings, usually the planning board president. An effective president helps to assure that the meeting runs smoothly and efficiently. When conducting a public hearing, the president has the responsibility to keep the meeting on course, bring discussion to a conclusion and ensure that the hearing is conducted fairly and with decorum. The planning board should be decisive and not become bogged down with procedural distractions, petty details and endless searches for more information.

Participants should know in advance when their item is expected to come up on the agenda, so that a person does not have to sit through other business unrelated to why he or she is there. If a subject is expected to be controversial and more people are expected to attend, then adequate time should be scheduled. People should not have to return for another meeting because time ran out.

Some tips for making a hearing more efficient are to:
Deal with routine and uncontroversial items first.
Be aware that some agenda items may be under time deadlines.
Keep to the schedule.
Make sure the agenda is not overloaded. and
If time runs out, schedule a continuance.

4. AFTER THE HEARING

Sometimes a decision is tabled until the next meeting. When considering these tabled decisions after the meeting, board members individually need to review the record of the hearing, and match the evidence presented with the relevant policies

and comprehensive plan elements. Then some conclusions about the matter can be made and translated into findings that will support the board member's decision at the next meeting. The board should not discuss these tabled items outside the public hearing.

Planning board members should evaluate the hearing. Did the hearing give the board what it needed to reach a decision? If some things need checking, call on your staff to find answers.

5. EIGHT ELEMENTS OF A SUCCESSFUL MEETING/HEARING

a. **Purpose**: There should be a good reason to meet. It might be gathering information on a particular project or hearing general statements by the public about development in their community (***listen*** and ***learn***). The purpose may be giving the public important information about a project (***teach***). The purpose may be performing the official functions of the planning board (***facilitate***).

b. **Notice**: People need to know they should attend, why they should, and when and where to go. For informal meetings, newspaper articles, flyers and posters are often sufficient. For official hearings, publications of legal notice are required. Check state law for specific legal notice requirements. Public notice is also covered in Chapter 7.

c. **Preparation**: For a successful meeting, an agenda must be prepared and published, people need to be notified, arrangements must be made for a proper meeting place and time, the needed reports and visual aids prepared and possibly refreshments provided.

d. **Agenda**: Public meetings and hearings need clear and fair rules about the procedure to be followed. An agenda available for public review prior to the meeting permits citizens to ready themselves to participate. By sticking to the agenda, the board can run an efficient hearing, allow adequate time for public participation and expedite applicants requests without undue delay.

e. **Participants**: Make sure the necessary people are invited to attend the meeting.

f. **Place**: The site for the meeting needs to be convenient for the participants and of a type and size appropriate for the meeting.

g. **Results**: Time should be taken at the conclusion of the meeting to reflect on the meeting and what was accomplished.

h. **Records**: A record of the meeting must be kept. A list of the time, place, participants and results may be adequate for an informal meeting. For public hearings, minutes must be kept.

These formal and informal public gatherings are perfect opportunities to practice ***listen***, ***learn***, ***teach***, and ***facilitate.*** In the public meeting the planning board should ***listen*** to the citizens, ***learn*** what concerns them, ***teach*** the public what can be done about their concerns and ***facilitate*** their participation in the challenges of their community. Similarly, the formal public hearing is used to ***listen*** to people's concerns about specific projects in their community, ***teach*** applicants and other citizens how the process works and ***facilitate*** the fair and effective exercise of due process.

CHAPTER SEVEN

I. LEGAL CONCEPTS

A. VALIDITY OF LAND USE REGULATIONS

Since the inception of modern zoning in the early 1900's, the courts have developed detailed guidelines for determining whether a particular land use regulation is a legitimate exercise of the "police power" which is the inherent, vested power of the state to prohibit activities that are harmful to the public health, safety, and welfare. In the aggregate, these guidelines require that regulations satisfy federal and state constitutional guarantees of due process and equal protection of the law.

This general principle is reflected in the following specific tests by which the validity of a regulation is determined:

1. The regulation in question must have been adopted in accordance with the applicable enabling statute.

2. The regulation must be reasonably related to, and must actually further, the public health, safety, or general welfare.

3. The regulation must not unreasonably discriminate between similarly situated land or uses. So-called "spot zoning" violates this principle.

4. The regulation must not be arbitrary or capricious either on its face or as applied to a particular property. It should go no further than is required to achieve its legitimate objective.

5. Zoning regulations must substantially conform to an adopted comprehensive plan.

6. The regulation must not have the effect of excluding racial, minority, or economic groups from the jurisdiction.

7. The regulation must not constitute an unconstitutional "taking" of property. The most commonly applied "taking" test is whether the regulation denies a property owner all economically viable use of his or her property.

B. STATUTORY BASIS FOR PLANNING AND LAND USE REGULATION

1. LOCAL PLANNING ENABLING ACT (76-1-101 *et seq.*, MCA)

Montana's Local Planning Enabling Act authorizes local governments to prepare comprehensive plans. The act requires the formation of an advisory planning board as a prerequisite to preparing a master plan. The statute requires a planning board to prepare a master plan. The statute authorizes the planning board to accept and spend money for planning purposes, and authorizes the governing body to levy property tax mills to generate revenues for planning. The act also specifies procedures for preparing and adopting a master plan.

2. MUNICIPAL ZONING ENABLING ACT (76-2-301 *et seq.*, MCA)

The Municipal Zoning Enabling Act authorizes incorporated cities and towns to adopt zoning regulations to regulate the size, height and location of buildings and other structures on lots, regulate densities, and divide the municipality into zoning districts to regulate the location of various uses. The municipality must have adopted a master plan, and the zoning regulations must conform to the plan.

Law

Municipalities that do not have an adopted master plan are authorized to adopt interim zoning regulations to govern land use while a master plan is being prepared and adopted. Interim regulations may be in force for six months, and can be extended twice for a one-year period. The statute states that municipalities can adopt interim zoning regulations as an "urgency measure" to prohibit uses that may be in conflict with a contemplated zoning proposal during the time that the municipality prepares and adopts a master plan.

Cities and towns are authorized to extend municipal zoning regulations beyond their corporate boundaries if they have adopted a master plan that includes the territory to be zoned. The municipality may not adopt extraterritorial zoning for an area that has been zoned by the county. A first-class city may extend extraterritorial zoning up to three miles beyond its corporate boundaries, a second-class city up two miles beyond, and a town or third-class city up to one mile beyond its corporate boundaries.

The Municipal Zoning Enabling Act requires that cities and towns establish a board of adjustment to handle appeals for variances and appeals from zoning decisions.

3. COUNTY ZONING ENABLING ACT (76-2-201 *et seq.* MCA)

The County Zoning Enabling Act authorizes counties to adopt zoning regulations for all or part of the county. The county may create zoning districts to control the location of various uses within the jurisdiction, regulate buildings and other structures, and provide a process to issue permits. Before it may adopt zoning regulations, the county must have adopted a comprehensive plan covering the entire planning board's jurisdiction, and the zoning regulations must conform to the plan. The county commissioners are required to direct the planning board having jurisdiction over the area proposed to be zoned to develop recommended regulations. County commissioners can appoint a zoning commission as an alternative to using a planning board.

The County Zoning Enabling Act provides that if a sufficient number of the real property owners within a proposed zoning district protest against the proposed zoning the county may not proceed with adoption for at least one year. The act specifically prohibits the county from adopting regulations that would prevent the complete use, development or recovery of agricultural, mining or timber products. The county commissioners are required to provide a board of adjustment as part of zoning regulations to hear and decide on appeals for variances and appeals from zoning decisions.

Counties that do not have an adopted comprehensive plan are authorized to adopt interim zoning regulations to govern land use while a comprehensive plan is being prepared and adopted. Interim regulations may be in force for one year, and can be extended one time for a one-year period.

4. COUNTY PLANNING AND ZONING DISTRICTS (76-2-101 *et seq.*, MCA)

When 60 percent of the real property owners within an area 40 acres or larger sign a petition, the county commissioners are authorized to create a planning and zoning district encompassing the area and adopt land use regulations for this district. Upon receipt of a proper petition, the county commissioners hold a public hearing and decide whether to form a planning and zoning district and where the boundaries should be located. The county commissioners are required to appoint a planning and zoning commission, comprising the three county commissioners, the county surveyor and the county assessor. The planning and zoning commission is required to prepare a development plan and recommend zoning regulations. The county commissioners are empowered to revise the recommendations made by the planning and zoning commission and adopt final regulations.

The act authorizes the county commissioners to grant variances from the regulations. Also, any person who feels aggrieved by a decision of the planning and zoning commission or the county commissioners may appeal to district court. Regulations under this act may not regulate lands used for agriculture, grazing, horticulture or growing of timber (76-2-109, MCA).

5. MONTANA SUBDIVISION AND PLATTING ACT (76-3-101 *et seq.*, MCA)

The act requires all municipalities and counties to adopt local subdivision regulations and to review and approve, conditionally approve, or disapprove land divisions creating parcels less than 160 acres in size, condominiums, and areas which will provide multiple spaces for mobile home and recreational camping vehicles. The law provides for several types of exemptions from subdivision review. The statute requires the Department of Commerce to adopt uniform standards for surveying and monumentation and preparation of final subdivision plats and certificates of survey.

C. OPEN PUBLIC MEETINGS (2-3-201 *et seq.*, MCA)

Montana law requires that local officials conduct public business in open, public meetings. Further, the law requires that officials take reasonable steps to notify the public that a meeting will be held and that certain matters will be addressed. Publishing the agenda, or a synopsis of the agenda, as part of the meeting notice is advisable. Many local governments have adopted the policy of not discussing a topic that is not on a meeting's agenda if the subject has any possible citizen interest.

D. REQUIREMENTS FOR PUBLIC HEARINGS

Public hearings are an integral part of most processes of adopting and enforcing land use plans and regulations. Public hearings and proper prior notice are required as part of the procedures to develop and adopt or amend a comprehensive plan, zoning regulations and subdivision regulations. Also, a public hearing is required as part of the procedure for approving an application for major subdivision or granting special exceptions or variances from zoning regulations.

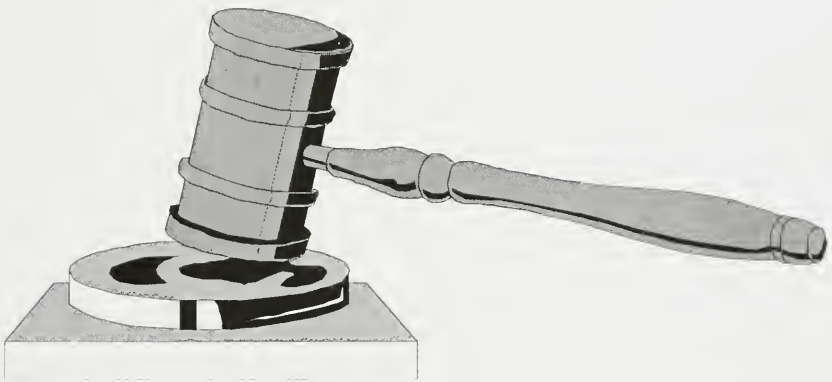
The purpose of public hearings is to allow citizens the opportunity to observe and participate in the development of public policy and in public decision-making. Public hearings should be conducted with the good-faith intention of considering citizens' comments and responding to their questions. Ensuring that everyone has an opportunity to speak is important. Public hearings do not have to be formal, although they should be conducted with enough formality to maintain order, give everyone an opportunity to comment, and prevent outspoken persons from dominating the proceeding. If necessary, the person conducting the hearing can set time limits on speakers or require speakers to use a microphone. In most cases, a non-verbatim record of the hearing is sufficient, although it is common practice to tape record meetings for possible future reference and transcription.

However, because decisions of boards of adjustment can be appealed to district court, the record of the hearing and the decision by the board should be accurate, and the hearing should be conducted with enough formality to assure that due process of law is observed and a proper record can be made.

E. LEGISLATIVE, ADMINISTRATIVE AND QUASI-JUDICIAL ACTIONS

The actions taken by local officials in adopting and enforcing land use regulations, and hearing appeals represent the three distinct and separate functions of government: legislative, administrative (executive) and judicial. When a governing body adopts zoning or development permit regulations, the action is "legislative." When the zoning officer issues a zoning permit, the action is "administrative." When a board of adjustment decides on an appeal, the action is "quasi-judicial," meaning that the action is judicial in nature although the board of adjustment is not a court.

This separation of power and function in land use regulation is important, just as the separation of the three powers is essential in American government in general. Understanding the distinct roles and function of the various entities involved in land use regulation should help citizens, planning boards, local officials and planners to better draft and administer the regulations.



APPENDIX A

SAMPLE BY-LAWS FOR PLANNING BOARDS

ARTICLE I - NAME

Section 1. Name

The official name of the organization is "The _____ Planning Board.

ARTICLE II - OFFICIAL SEAT

Section 1. Official Seat

The official seat of the Planning Board is in the _____ (county courthouse or city hall) of _____, Montana, and meetings will be held there except for occasions when the Board, by a majority vote of those present at any regular or special meeting otherwise direct.

ARTICLE III - OFFICERS

Section 1. Officers

The elective officers of the Planning Board include of a President and Vice-President. The Director of Planning, if one is employed by the board, will serve as Executive Secretary of the Board.

Section 2. Nomination and Election of Officers

Nomination of elective officers will be made from the floor at the annual election meeting which will be held on the first regular meeting of each year. The election will follow immediately thereafter. Officers may be nominated from among the appointed board members only. A nominee receiving a majority vote of those present at the election will be deemed elected.

Section 3. Terms of Officers

The elective officers take office at the first regular meeting in _____ and serve for a term of one year.

Section 4. Vacancies in Offices

Vacancies in elective offices will be filled immediately by regular election procedure for the unexpired portion of the term.

Section 5. Duties of Officers

(a) President

The president will preside at all meetings and public hearings of the planning board and will call special meetings when he or she deems them necessary or is required to do so. The president shall appoint all committees, and will be an ex-officio member of each, without the power to vote. The president will certify the expenditure of planning board funds and sign the minutes of planning board meetings and all official papers and plans involving the authority of the planning board which are transmitted to the county commission (or city council). The president may discuss all matters before the planning board and make motions on all voting thereon. He will perform all the duties normally conferred by parliamentary usage on such officers and will perform such other duties as may be ordered by the Planning Board except as otherwise provided in these by-laws, in other Planning Board resolutions, or in county (or city) ordinances, or state law. The president will take the lead in promoting effective public relations in the development and implementation of a master plan for the jurisdictional area and related ordinances and regulations.

(b) Vice President

The vice president will assume the duties and powers of the president in his absence. If the president and vice-president are both absent, the remaining planning board members may elect a temporary president by a majority vote of those present at a regular or special meeting. This person will assume the duties and powers of the president and the vice president for that meeting.

(c) Executive Secretary

The executive secretary will keep the minutes of all regular and special meetings of the planning board. Such minutes will be approved by the planning board. He or she will also keep the minutes of planning board committee meetings when requested to do so. The executive secretary will give notice of all regular and special meetings to Planning Board members, prepare the agenda of regular and special meetings, serve proper and legal notice of all public hearings, and draft and sign the routine correspondence of the Planning Board. The executive secretary will maintain a file of all studies, plans, reports, recommendations and official records of the Planning Board and perform such other duties that are normally carried out by a secretary and as the Planning Board may direct.

The Director of Planning may designate a member of his staff to perform any of the duties of the Executive Secretary under the Director's supervision.

Section 6. Order of Business - Regular Meetings for Administrative, Routine and Hearing-Type Matters.

(a) Call to order by President
(b) Roll Call
(c) Approval of minutes of preceding meeting
(d) Public hearings

(e) Regular business
(f) Petitions and communications from audience
(g) Written communications
(h) Reports from Planning Board members and committees
(I) Staff reports
(j) Adjourn

Section 7. Order of Business - Regular Meeting for Discussion of Matters Related to Comprehensive Planning

(a) Call to order by President
(b) Roll call
(c) Approval of minutes of preceding meeting
(d) Staff reports
(e) Reports from Planing Board members and committees
(f) Communications from audience (related to comprehensive planning only)
(g) Adjourn

Section 8. Public Hearing Procedure

(a) President summarizes the application orally. The planning director or staff presents a staff report which describes the key technical points of the application and the proposal's relationship to the comprehensive plan, other plans and the local government's land use regulations. For planning boards without staff the assigned committee chairperson will present the report. The planning director or assigned committee chairperson adds any related or background information. Board members are permitted to ask any relevant questions relating to the application, to the president or staff.

(b) Public hearing opened. Any petitions and data may be presented at this time.

(c) Proponents in audience given opportunity to speak in favor of application. Information submitted should be factual, relevant and not merely duplicative of previous presentations. A reasonable time will be allowed each speaker. Each person speaking must give name, address, and nature of interest in matter.

(d) Opponents in audience given opportunity to speak against application. Information submitted should be factual, relevant and not merely duplicative of previous presentations. A reasonable time will be allowed each speaker. Each person speaking must give name, address and nature of interest in the matter.

(e) Other interested parties allowed to comment briefly or make inquiries. Planning staff presents technical analysis, planning considerations and basic policy, cites possible alternatives and makes recommendations.

(f) Brief rebuttal for proponents and opponents heard separately and consecutively, with presentation

limited to their spokesperson.

(g) Public hearing closed. Board members voice other significant considerations, pose any relevant questions through the president. The president interrogates proper parties for answers.

(g) Motion for disposition.

Section 9. Quorum

_____ members of the Planning Board will constitute a quorum for the transaction of business and the taking of official action. A quorum will constitute a majority of the total membership of the planning board.

Section 10. Motions

Motions will be restated by the President before a vote is taken. The name of the members making and seconding a motion will be recorded in the minutes of the meeting.

Section 11. Voting

Any action taken by a quorum of the planning board members at any regular or special meeting of the planning board will be deemed and taken as the action of the board. All matters requiring a public hearing before the planning board and all matters referred to the planning board by the county commissioners (or city council) will be by roll call vote and the vote of each member shall be recorded in the minutes of the meeting.

Section 12. Staff Reports

On all matters considered by the Planning Board, any report and recommendations of the planning staff or a board committee must be presented to the board and recorded in the minutes of the meeting.

Section 13. Parliamentary Procedure

Parliamentary procedure in Planning Board meetings will be governed by Roberts Rules of Order, Revised, unless specifically otherwise provided in these by-laws, in other planning board resolutions, in county (or city) ordinances or in the State of Montana Planning Enabling Act (Sections 76-101 *et seq*, MCA).

ARTICLE IV - MEETINGS

Section 1. Regular Meetings: Time and Place

A regular monthly meeting for the establishment of policies related to the comprehensive plan and development program and for consideration of planning legislation will be held on the _____ of each month at _____(a.m.;p.m.) in the _____ (county courthouse or city hall).

A regular monthly meeting for administrative, routine and hearing-type matters will be held on the (1st, 2nd, 3rd or 4th) (day of week) evening of each month at _____ (a.m.;p.m.) in the county courthouse (or city hall), except as otherwise designated by the planning board.

Any change in the hour, date and place of regular meetings will be given wide publicity for the convenience of persons having business before the Board. When the regular meeting day falls on a legal holiday, the meeting will be on the following weekday.

Section 2. Recessed Meetings

Any regular meeting may be recessed to a definite time and place by a majority vote of the Planning Board members present at the meeting.

Section 3. Special Meetings

Special meetings may be called by the President, and must be called upon the written request of any ___ members of the Planning Board.

Section 4. Notice of Meetings

The executive secretary will give written notice of all regular and special meetings to the members of the planning board. Notice of all regular meeting will be postmarked at least four days (96 hours) prior to the meeting. Notice of all special meetings will be postmarked at least two days (48 hours) prior to the meeting. The notice must state the time and place of the meeting and will be accompanied by an agenda of the matters to be considered by the planning board at such meeting. The agenda of all regular meetings will be closed six days prior to the following meeting of the planning board.

Petitions and communications from the audience and matters brought to the meeting by the planning director and board members, which are not on the agenda for the meeting, may be received and but not discussed at the meeting. No discussion or official action may be taken on any matter at a Planning Board meeting which is not included on the agenda for such meeting or which has been added to the agenda after it has been mailed to the planning board members.

Section 5. Public Nature of Meeting and Records

All regular and special meetings, hearings, records and accounts shall be open to the public.

ARTICLE V - COMMITTEES

Section 1. Establishment of Committees

The Planning Board may establish such standing or special committees it deems advisable and assign to each committee specific duties or functions. Each standing committee will consist of _____ members. No standing or special committee may commit the planning board to the endorsement of any plan or program.

Section 2. Appointment and Terms of Committee Members

The president shall appoint the members of each standing or special committee and name the president of each committee. The members of each standing committee shall be appointed at the first regular meeting in July for a term of one year.

Section 3. Committee Vacancies

Vacancies on committees will be filled immediately by the president for the unexpired portion of the term.

Section 4. Meeting of Committees

All committees will meet at the call of the committee president, provided that the president of the planning board may, with adequate notice, call a special meeting of any committee at any time.

The director of planning will issue notice of committee meetings at the request of a committee president or the planning board president.

Section 5. Quorum and Voting

A majority of the members appointed constitutes a quorum of all committees. The affirmative vote of a majority of the committee membership is required for the adoption of a matter before the committee.

ARTICLE VI - AMENDMENTS

Section 1. Amendments

These by-laws may be amended at any regular meeting by the affirmative vote of ____ members of the planning board, provided the proposed amendments must have been submitted in writing at a previous meeting.

APPENDIX B

OUTLINE FOR A WORK PLAN

This outline for a work plan is merely a possible form. The work plan of a jurisdiction should reflect the character of the community and the vision of the planning board and need not follow this example.

WORK PLAN

TO: The _____ County (or City) Commission (or Council)

FROM: The _____ Planning Board,
_____, Board President

DATE: _____

RE: The Proposed Work Plan for Fiscal Year _____ (FY__)

In compliance with **76-1-305(4), MCA**, the _____ Planning Board proposes the following Work Plan for FY__.

A. SUMMARY OF PRESENT YEAR'S ACCOMPLISHMENTS
   1) Certificate of Survey activities.
   2) Subdivision review activities.
   3) Work related to the master plan.
   4) Public meetings and hearings:
      a) Coordinate meeting of planning and zoning board.
      b) Provide staff assistance.
      c) Prepare agendas.
      d) Citizen participation.
      e) Notify member.
      f) Keep records of minutes of the meeting and hearings.
   5) Economic development activities.
   6) Preparation of work plan and annual report.
   7) Zoning activities:
      a) Zoning code enforcement.
      b) Sign code enforcement.
   8) Supervision of public works projects:
   9) Supervision of consultant work.

10) Supervision of grant proposals.
11) Committee work.
12) Personnel activity.
13) Miscellaneous projects.

B. SUMMARY OF ACTIVITIES FOR THE COMING YEAR
1) Continuation of work on the master plan.
2) Administration of subdivision regulations and zoning codes through the review of:
a) site plans.
b) conditional use permits.
c) planned unit development.
d) subdivision plats (minor and major).
e) certificates of surveys.
3) Public meetings and hearings.
4) New program and projects.
5) Programs and project continued over from previous year.
6) Office automation/personnel activities.
7) Overseeing of public works projects.
8) Other administrative duties and miscellaneous projects.
9) Preparation of the work plan and the annual report.

C. LONG RANGE PLANNING
1) Planned Unit Development.
2) Open Space preservation.
3) Transportation planning.
4) Comprehensive Plan Updates.
5) Critical Lands Inventory and planning.
6) GIS implementation.
7) Capital Improvement Planning for infrastructure.

D. PROPOSED PERSONNEL NEEDS
1) Full Time Equivalent (FTE) Breakdown:
a) FTE Funding
b) Changes in personnel.

E. PROPOSED FY __ CAPITAL NEEDS
1) Computer and software upgrades, GIS software or updates.
2) Other expenses.

APPENDIX C

OUTLINE FOR AN ANNUAL REPORT

NOTE: The purpose of the annual report is to inform the public about the purposes and accomplishments of planning in their community. The annual report can be distributed in a number of different ways: bound copies sent to those on a mailing list, a pamphlet mailed to all addresses in the jurisdiction or an advertisement or insert published in a local newspaper. The annual report should be available to all and the planning board should seek that form that will reach the most people economically.

ANNUAL REPORT

A. THE GREETING

1) Letter from the President of the Planning Board

a. The Heading:

- The official title of the planning board (city, county, city-county).
- The address of the planning office.
- The phone number and fax number of the planning office.
- Date line (full name of month, the day and the complete year). Often placed at right margin.

b. The Body:

This part of the letter should introduce the report, explain the reasons for the annual report and encourage public involvement in planning efforts for the coming year.

c. The Closing:

The letter ends with a complimentary close (for example, Sincerely or Best Wishes in the Coming Year, etc.). The president signs his name and below it is printed: his name, followed by a comma and "board president".

2) A List of Planning Board Members

a. A description of the number of board members, how members are appointed (by county commissioners, city council and/or conservation district)

b. Names of present board members and the type of appointment (city, county or conservation district).

3) A List of Planning Board Staff, Including The Address and Telephone Numbers of the Office.

a. The names and positions of staff members, including their office and fax phone numbers.

4) The Meeting Schedule and Location of the Planning Board.

a. The day of the month the board meets regularly (for example, the first Tuesday), the time the meeting begins and the address where the meeting takes place.

5) Financial Information About the Planning Program.
   a. Funding sources for the program.
   b. The annual budget for planning and zoning.
6) Explanation of Any Changes in Programs or Policies During the Past Year
   a. New programs and/or policies for the coming year.
   b. Changes in existing programs and/or policies.
7) Highlights of Specific Goals and Plans for the Coming Year.
   a. What the planning program will give special priority to in the coming year, in addition to regular duties, such as bridge or road projects, infrastructure extension, and so on.
8) The table of contents of the annual report (if it is more than a few pages).

B. THE BODY

The body of the report can be divided into departmental activities and ongoing planning activities. The body may include charts and graphs that illustrate growth or decline patterns over a number of years. Such graphs and charts may help simplify for the general reader complex data about growth or decline in the community.

1) Developmental Activities
   a. Subdivisions and Plat Reviews.
   b. Rezoning Requests and Variances.
   c. Building Permits.
   d. Site Plans.

2. Planning Activities
   a. Master plan updates.
   b. Transportation plans.
   c. Geographic Information Systems (GIS) Mapping Projects.
   d. Other special projects.

APPENDIX D

OPEN MEETINGS AND PUBLIC NOTICE REQUIREMENTS

OPEN MEETINGS

Public hearings are an integral part of most processes of adopting and enforcing comprehensive community plans and land use regulations. Public hearings allow citizens the opportunity to observe and participate in the development of public policy and in public decision-making.

Montana law also requires that officials take reasonable steps to notify the public that a meeting will be held and that certain matters will be addressed. Publishing the agenda, or a synopsis of the agenda, as part of the meeting notice is advisable. Many local governments have adopted a policy of not discussing a topic that is not on the agenda if the subject would possibly be on interest to citizens not in attendance..

Public hearings should be conducted with the good-faith intention of hearing citizen remarks and listening to their questions. Ensuring that everyone has an opportunity to speak is important. Public hearings should be conducted with enough formality to maintain order, give everyone an opportunity to comment, and prevent outspoken persons from dominating the hearing. The chair may set time limits on speakers or require speakers to use a microphone.

In most cases, a non-verbatim record of the hearing is sufficient, although it is common practice to tape record meetings for possible future reference and transcription. However, because decisions of boards of adjustment can be appealed to the district court, the record of the hearing and the decision by the board should be an accurate record and the hearing should be conducted with enough formality to assure that a proper record can be made.

MONTANA STATUTES PERTAINING TO OPEN MEETINGS

2-3-203. Meeting of public agencies and certain associations of public agencies to be open to public - exceptions. (1) All meetings of public or governmental bodies, board, bureaus, commissions, agencies of the state, or any political subdivisions of the state or organizations or agencies supported in whole or in part by public funds or expending public funds must be open to the public.

(2) All meetings of associations that are composed of public or governmental bodies referred to in subsection (1) and that regulate the rights, duties, or privileges of any individual must be open to the public.

(3) Provided, however, the presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting must be open.

(4) (a) However, except as provided in subsection (4)(b), a meeting may be closed to discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect of the litigating position of the public agency.

(b) A meeting may not be closed to discuss strategy to be followed in litigation in which the only parties are public bodies or associations described in subsection (1) and (2).

(5) Any committee or subcommittee appointed by a public body or an association described in subsection (2) for the purpose of conducting business which is within the jurisdiction of that agency is subject to the requirements of this section.

2-3-211. Recording. Accredited press representatives may not be excluded from any open meeting under this part and may not be prohibited from taking photographs, televising, or recording such meetings. The presiding officer may assure that such activities do not interfere with the conduct of the meeting.

2-3-212. Minutes of meetings -- public inspection. (1) Appropriate minutes of all meetings required by 2-3-203 to be open shall be kept and shall be available for inspection by the public.

(2) Such minutes shall include without limitation:

(a) date, time and place of meeting;

(b) a list of the individuals members of the public body, agency, or organization in attendance;

(c) the substance of all matters proposed, discussed, or decided; and

(d) at the request of any member, a record by individual members of any votes taken.

2-3-213. Voidability. Any decision made in violation of 2-3-203, MCA may be declared void in a district court having jurisdiction. A suit to void any such decision must be commended within 30 days of the decision.

2-3-221. Costs of plaintiff in certain actions to enforce constitutional right to know. A plaintiff who prevails in an action brought in district court to enforce his rights under Article II, section 9, of the Montana constitution may be awarded his costs and reasonable attorney's fees.

PUBLIC NOTICE

Three essential elements of adequate public notice of a public meeting or hearing are that:

1) The notice includes the date, time and location of the meeting,
2) The notice is published in a manner that permits it to be seen by the public, and
3) The notice is published sufficiently well in advance of the public meeting to allow people time to prepare and attend.

State statutes generally require that notice be made not less than 15 days in advance of the meeting. In the case of the planning board submitting a proposed master plan to the governing body, the planning board must hold a public hearing on the master plan. It must publish in a newspaper of general circulation in the jurisdictional area at least 10 days prior to the public hearing a notice of the date, time and place of the hearing.

MONTANA STATUTES PERTAINING TO PUBLIC NOTICE

7-1-2121. Publication and content of notice. Unless otherwise specially provided, whenever a local governmental unit other than a municipality is required to give notice by publication, the following applies:

(1) Publication must be in a newspaper meeting the qualifications of subsections (2) and (3), except that in a county where no newspaper meets these qualifications, publication must be made in a qualified newspaper in an adjacent county. If there is no qualified newspaper in an adjacent county, publication must be made by posting the notice in three public places in the county, designated by resolution of the governing body.

(2) The newspaper must be:

(a) of general paid circulation with a second-class mailing permit;

(b) published at least once a week; and

(c) published in the county where the hearing or other action will take place.

(3) In the case of a contract award, the newspaper must have been published continuously on the county for the 12 months preceding the awarding of the contract.

(4) If a person is required by law or ordinance to pay for publication, the payment must be received before the publication may be made.

(5) The notice must be published twice, with at least 6 days separating publication. The first publication must be no more than 21 days prior to the action and the last, no less than 3 days prior to the action.

(6) The published notice must contain:

(a) the date, time and place of the hearing or other action:

(b) a brief statement of the action to be taken; and

(c) the address and telephone number of the person who may be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring notice by publication.

(7) A published notice required by law may be supplemented by a radio or television broadcast of the notice in the manner prescribed in 2-3-105, MCA.

7-1-2122. Mail Notice. (1) Unless otherwise specifically provided, whenever a local government unit other than a municipality is required to give notice of a hearing or other official act by mail, the requirement may be met by:

(a) deposit of the notice, properly addressed, in the United States mail with postage paid at the first class rate;

(b) sending the notice by certified mail, rather than first class; or

(c) mailing the notice at the bulk rate instead of first class if the notice is to be given to all electors or residents of the affected local government unit.

(2) The notice shall contain:

(a) the date, time and place of the hearing or other action;

(b) a brief statement of the action to be taken;

(c) the address and telephone number of the person who may be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring mail notice.

(3) When notice by mail is required, the requirement applies only to persons whose addresses are known.

7-1-4127. Publication of notice. (municipalities) (1) When a municipality is required to publish notice, publications shall be in a newspaper, except that in a municipality with a population of 500 or less or in which no newspaper is published, publication may be made by posting in three public places in the municipality which have been designated by ordinance.

(2) The newspaper must be:

(a) of general paid circulation with a second-class mailing permit:

(b) published at least once a week; and

(c) published in the county where the municipality is located;

(d) published continuously in the county for the 12 months preceding the awarding of the contract.

(3) In a county where no newspaper meets these qualification, publication shall be made in a qualified newspaper in an adjacent county.

(4) If a person is required by law or ordinance to pay for publication, the payment must be received before the publication may be made

7-1-4128. Notice. (municipalities) When notice of a hearing or other official act is required, the following shall apply:

(1) The notice shall be published twice, with at least 6 days separating each publication. The first publication must be no more than 21 days prior to the action and the last, no less than 3 days prior to the action.

(2) The published notice must contain:

(a) the date, time and place of the hearing or other action will occur;

(b) a brief statement of the action to be taken; and

(c) the address and telephone number of the person who may be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring notice by publication.

(3) A published notice required by law may be supplemented by a radio or television broadcast of the notice in the manner prescribed in 2-3-105 MCA.

7-1-4129 Mail Notice. (Municipalities). (1) Unless otherwise specifically provided, when a municipality is required to give notice of a hearing or other official act by mail, the requirement may be met by:

(a) deposit of the notice, properly addressed, in the United States mail with postage paid at the first class rate;

(b) sending the notice by certified mail, rather than first class; or

(c) mailing the notice at the bulk rate instead of first class if the notice is to be given to all electors or residents of the affected local government unit.

(2) The notice shall contain:
(a) the date, time and place at which the hearing or other action will be taken;
(b) a brief statement of the action to be taken;
(c) the address and telephone number of the person who may be contacted for further information on the action to be taken; and
(d) any other information required by the specific section requiring mail notice.
(3) When notice by mail is required, the requirement shall apply only to persons whose addresses are known.

7-1-4131. Public hearing. (1) When required, the governing body shall conduct public hearings for the purpose of providing reasonable opportunity for citizen participation prior to final decisions .
(2) At a minimum, a public hearing shall provide for submission of both oral and written testimony fr and against the action or matter at issue. If the hearing is not held before the ultimate decision makers, provisions shall be made for the transmittal of a summary or transcript of the testimony received to the ultimate decision makers prior to their determination
(3) Public hearings may be held at regular or special meetings of the governing body.
(4) Petitions and letters received by the governing body or executive prior to the hearing shall be entered by reference in to the minutes of the governing body and considered as other testimony received at the hearing.
(5) Hearings may be adjourned from day to day or to a date certain.
(6) Except for budget hearings, the governing body may designated subcommittee or hearing examiner to conduct public hearings.

7-1-4141. Public meeting required. (1) All meetings of municipal governing bodies, board, authorities, committees, or other entities created by a municipality shall be open to the public except as provided in 2-3-203 MCA.
(2) Appropriate minutes shall be kept of all public meetings and shall be made available upon request to the public for inspection and copying.

7-1-4142. Public participation. Each municipal governing body, committee, board, authority, or entity, in accordance with Article II, section 8, of the Montana constitution and Title 2, chapter 3, shall develop procedures for permitting and encouraging the public to participate in decisions that are of significant interest to the public.

7-1-4143. Participation. In any meeting required to be open to the public, the governing body, committee, board, authority, or entity shall adopt rules for conducting the meeting, affording citizens a reasonable opportunity to participate prior to the final decision.

76-1-602. Public hearing on proposed master plan. (1) Prior to the submission of the proposed master plan to the governing bodies, the board shall give notice and hold a public hearing on the plan.
(2) At least 10 days prior to the date set for hearing, the board shall publish in a newspaper of general circulation in the jurisdictional area a notice of the time and place of the hearing.

76-2-106. Adoption of development district. (1) Adoption by the planning and zoning commission of the development district or any change therein may be in whole or in part but must be by the affirmative vote of the majority of the whole commission, provided, however, that prior to any such adoption, a public hearing shall have been held not less than 15 days after notice thereof shall have been posted in at least three public places within the area affected

.

76-2-205. Procedure for adopting regulations and boundaries.

(1) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the zoning district must be published once a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:

(a) the boundaries of the proposed district

(b) the general character of the proposed zoning regulations

(c) the time and place of the public hearing.

(d) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder.

76-2-220 Zoning Commission - appointment and duties.

(2) If a commission is appointed, it shall hold a public hearing to receive relevant testimony. The hearing, which may be held jointly with the hearing by the county commissioners, must be upon at least 15 days notice of the time and place of the hearing and must be published in the contracted newspaper provided for in 7-5-2411, MCA, or a newspaper of general circulation in the county.

76-2-226. Appeals to board of adjustment.

(4) The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof as well as due notice to the parties in interest and decide the same within a reasonable time.

76-3-503. Hearing on proposed regulations. Before the governing body adopts subdivision regulations pursuant to 76-3-501, MCA, it shall hold a public hearing thereon and shall give public notice of its intent to adopt such regulations and of the public hearing by publication of notice of the line and place of the hearing in newspaper of general circulation in the county not less than 15 or more than 30 days prior to the date of the hearing.

76-3-605. Hearing on preliminary plat.

(3) Notice of such hearing shall be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing. The subdivider, each property owner of record, and each purchaser under contract for deed of property immediately adjoining the land included in the plat shall also be notified of the hearing by registered or certified mail not less than 15 days prior to the date of the hearing.

APPENDIX E

A PRIMER: SUBDIVISION REVIEW UNDER THE MONTANA SUBDIVISION AND PLATTING ACT

Originally prepared by **Jim E. Richard**, Consultant,
in association with **Lisa Bay**, **Edward Casne**, and **Randall Thoreson**

and an Advisory Team:
Senator Ethel Harding, representing the Montana Association of Clerk and Recorders
Kathy Macefield, representing the Montana Association of Planners
Linda Stoll-Anderson, representing the Montana Association of Counties
Lee Tuott, representing the Montana Association of Planners

MONTANA DEPARTMENT OF COMMERCE
Local Government Assistance Division
Community Technical Assistance Program

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2nd Edition

July, 1996

Upon request, this publication will be made available in an alternative accessible format.

PREFACE

A. PURPOSE OF THE HANDBOOK

This publication is an introduction to land subdivision regulations in general, and to the MSPA in particular. It has been revised to incorporate changes to the MSPA as a result of legislation passed in the 1993 & 1995 Legislative sessions. 1993 changes to the MSPA included: the 20-acre definition of "subdivision" was changed to 160 acres; the occasional sale exemption was deleted; the use of the family conveyance exemption was restricted to a "one-time only" transfer of land in each county to each member of the immediate family; and the eight public interest criteria were changed to five primary review criteria. 1995 changes included: the insertion of "private property rights" into the purpose statement; exemption of minor subdivisions from park dedication requirements; revision of the park dedication requirement for major subdivisions; local governments may not deny or conditionally approve subdivisions based solely on educational considerations; if a governing body's approval decision is "arbitrary or capricious", it may be sued by a subdivider for actual damages.

This publication is intended to provide guidance to local governments and has been designed for the lay person who is not familiar with the complexities of subdivision regulation under Montana law. The publication will be of particular interest to new governing bodies and other local officials and staff. In addition, it will be useful to landowners, subdividers, developers, architects and engineers. Citizens interested in community development and conservation issues also may find this publication helpful. It is part of an on-going program of technical assistance provided by the Department of Commerce (DOC) Community Technical Assistance program (CTAP) to local government officials, planning boards, planning staff, and development interests.

The goals of this publication are to:

1. Promote better understanding of subdivision regulations and administrative practices between local government officials and staff, developers, conservationists, and the general public;

2. Inform new planning board members and governing body officials of the basic procedures involved in administering the Montana Subdivision and Platting Act (MSPA); and

3. Encourage the development of a fair and smooth subdivision regulatory process at the local government level.

Subdivision development and regulation are complex processes that involve numerous participants -- state agency personnel, local officials, subdividers and their agents, and local citizens. This publication does not deal with all issues and all concerns associated with the process. Other publications and materials that explain specific legal and technical aspects of subdivision design and regulation in Montana are available from the Montana Department of Commerce Community Assistance Program, the Montana Department of Environmental Quality, and the private sector.

B. ACKNOWLEDGMENTS

This publication was first published in March, 1986. It was prepared by Jim E. Richard, consultant, in association with Lisa Bay, Edward Casne and Randy Thoreson.
In addition, there were several other persons who made significant contributions to this publication, including: Jean Wilcox, Deputy County Attorney of Missoula County;
Tom Wing, of Resource Engineers and Associates; Ethel Harding, former Clerk and Recorder from Polson; Lee Tuott, former Butte-Silver Bow Planning Director; Linda Stoll-Anderson, Lewis and Clark County Commissioner; and Kathy Macefield, Lewis and Clark Areawide Planning Organization.

The revised publication was prepared by Jim E. Richard, consultant, along with Gavin Anderson, Jim Edgcomb, and Robb McCracken, with the Community Technical Assistance Program (CTAP); and Rich Weddle, staff attorney for the program. In addition, Margaret Clark, a former planner for the CTAP, was instrumental in the first edition of the document. Barb Martens, of the Missoula Office of Planning and Grants, made significant contributions to the new second edition.

INTRODUCTION

A Primer: Subdivision Review Under the Montana Subdivision and Platting Act is intended to provide local governing officials, planning board members, subdividers and others interested in the process with a basic understanding of subdivision review under the Montana Subdivision and Platting Act (MSPA). In Montana, complex provisions govern the review and approval of land divisions, mobile home and recreation vehicle parks, and condominiums. The MSPA provides the broad statutory authority for subdivision review, and local subdivision regulations in each municipality and county specify the specific standards that a subdivision must meet. Further complicating a person's understanding of the requirements are numerous court decisions and Attorney General Opinions addressing the operation of the law. The Primer tries to put the complex requirements in an understandable perspective.

The Primer provides background on the history of subdivision development and subdivision regulation, including a section describing the legal framework provided by state statutes, pertinent court decisions and state Attorney General opinions. It also points out the need and benefit of adopting effective and functional local regulations.

A major part of the Primer is a comprehensive explanation of the review and approval process. The subdivision review process is basically a three phase process, and the local responsibilities under each phase are explained. While the Primer's primary focus is on the MSPA and local subdivision review and approval, it also summarizes the approval process of water, sewer and solid waste facilities under the Montana Sanitation in Subdivisions Act (MSIS). The approval of sanitation facilities is an integral part of subdivision review in Montana. Because the main purpose of subdivision review and approval is to ensure sound land use development, the Primer explains many of the elements of proper subdivision design.

A number of other publications can be obtained that will offer assistance in the subdivision review process. Two documents published by the Montana Department of Commerce are particularly helpful. A Manual for the Administrator of The Montana Subdivision and Platting Act provides very detailed explanations of the various aspects of subdivision review and approval. Any person responsible for administering the local subdivision regulations would find the Manual very useful. The Advisory Model Subdivision Regulations offers recommendations for provisions that can be included in local subdivision regulations.

If you have any questions about the Primer, the subdivision review process, or any other Department publications, please contact the Montana Department of Commerce, Community Technical Assistance Program, at 1424 Ninth Avenue, PO Box 200501, Helena, MT 59620-0501, phone (406) 444-3757.

I. NEED AND BENEFIT OF SUBDIVISION REGULATIONS

A. HISTORICAL VIEW

The subdivision of land for urban development is a natural aspect of modern industrial societies. In the United States, state and local governments adopted subdivision control laws in response to the harmful consequences of the premature subdivision of land that occurred in the late 1800's and early 1900's. During that period in American history a boom in land speculation resulted in the splitting of large tracts of agricultural and forest lands into small urban parcels.

Prior to the mid-1920's, subdivisions were created primarily to facilitate land transactions. Speculation was an integral part of that early American land tradition. There was little or no regulation, and land was plentiful, inexpensive and could be divided or developed at low cost. While some profited from the land boom, many others found themselves living on parcels in partially completed developments and without fully developed basic services. Many tracts were not needed for residential or other types of development, and many owners forfeited the properties to the government.

Extensive land speculation fostered premature subdivision of land, tied up large amounts of capital for unproductive periods of time, increased property taxes and special assessments, and raised utility and maintenance costs. Unsafe and poor quality housing developments also were a consequence of haphazard growth. Lots were created that were not served by useable roads or proper water and sewer systems. Often lots were created in unsuitable locations, such as in areas that regularly flooded. Correcting improperly designed subdivisions often proved to be difficult, impossible, or cost prohibitive.

Historically, subdivision regulations developed as a means of responding to these problems. Subdivision regulations were drafted to give local government officials some control over the way land was platted and converted into building sites. The U.S. Department of Commerce published the Standard City Planning Enabling Act in 1926. The Act initiated the concept of subdivision regulations serving as a legal means for a municipality to influence orderly land development, rather than subdivision functioning chiefly as a land sales device.

Subdivision regulations have evolved through several phases. In the early 1900's, when subdivision control laws were concerned with platting and recording, state and local governments began using subdivision regulations to ensure quality development and to shift the cost of improvements to the developer. After World War II local governments shifted their emphasis to adopting regulations that required dedication of open space, recreational areas or school sites as part of developments. Since the 1970's, subdivision regulations have also served to mitigate the impacts of growth on community services and the natural environment. Montana enacted its first enabling law for subdivision control by cities and counties in 1883. That act, Plats of Cities and Towns, gave local governments control over surveying and platting of townsites and subdivisions. To assure safe septic systems and adequate water supplies, the Legislature passed the Montana Sanitation in Subdivisions Act in 1961.

In response to statewide concern over unregulated land divisions, the 1973 Legislative session passed the Montana Subdivision and Platting Act (MSPA), which gave local governments more comprehensive control over surveying, platting and subdivision design than did the earlier statute. The MSPA requires that local governments adopt and enforce local subdivision regulations. During the same

session, the Montana Sanitation in Subdivisions Act was changed to require a land developer to have water and sewer plans reviewed and approved by the Department of Environmental Quality prior to filing the plat or survey with the county clerk and recorder.

In 1993, the Legislature amended the Montana Subdivision and Platting Act because of continuing concern over land divisions that were not being regulated. A number of significant changes were made to the MSPA, including: the 20-acre definition of "subdivision" was changed to 160 acres; the occasional sale exemption was deleted; the use of the family conveyance exemption was restricted to a "one-time only" transfer of land in each county to each member of the immediate family; and the eight public interest criteria were changed to five primary review criteria. As a result of these changes, many land divisions that were previously unregulated are now reviewed under the MSPA.

The 1995 Montana Legislature again made significant changes to the MSPA. Among the changes were: the insertion of protection of "private property rights" into the purpose statement; exemption of minor subdivisions from park dedication requirements; implementation of a detailed formula for calculating the park dedication requirement for major subdivisions, significantly reducing the amount of land that must reserved for parks; prevention of local governments from denying or conditionally approving a subdivision based solely on educational considerations; allowance of a subdivider to sue the governing body, for actual damages, if a decision was made "arbitrarily or capriciously."

B. NEED AND BENEFIT

People must have a place to live and work. Providing those places results in the essential activity of land subdivision and development. The manner in which land originally is divided can determine, with positive or negative results, the future permanent development pattern of a community. Once large tracts of land are broken down into individual parcels, the pattern of development is irretrievably set. Thus, land developers take actions that greatly affect communities, homeowners, taxpayers, the governing body and the general public.

Although each community is unique, similar opportunities and problems are encountered wherever land is divided. Local officials are learning that land developments that are properly regulated can substantially benefit the community. Much of the form and character of a community is determined by the character of subdivisions and the standards to which they are built.

When cities or counties cannot, or do not, exert proper control over the division of land, the result can be low quality or substandard developments, excessive or premature development of land, or partial or inadequate development. Many of the most frustrating community problems today are the result of haphazard development.

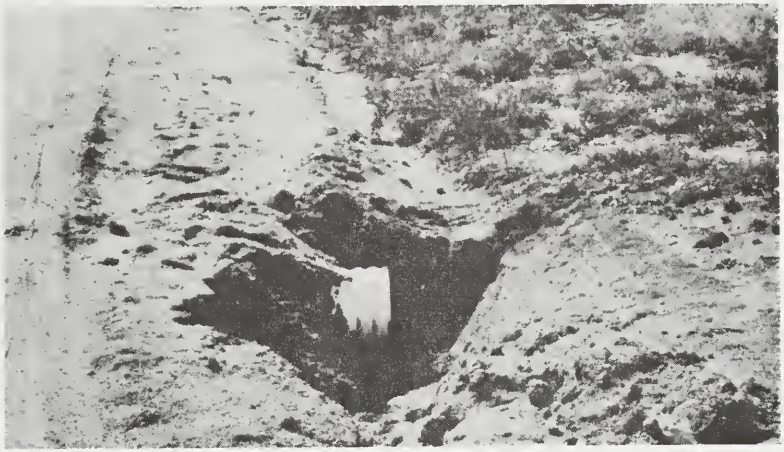
The single most important benefit of subdivision regulation is the safety and welfare of the community, including lot buyers. The community has a legitimate interest in any new subdivision. The original layout determines the permanent character of the area or community. The manner in which the subdivision is designed and built directly affects the safety and health of the residents and the community at large.

Many local officials believe that subdivision regulations are the most effective land use tools available and are the most useful in achieving land use goals. Subdivision

regulations influence the first step of land development and the creation of new parcels.

Lot buyers - homeowners, business owners, rural property owners - greatly benefit from subdivision regulations.

Local road and public works departments have found that subdivision regulations directly benefit their operations and budget. Properly designed and constructed streets are easier and cheaper to maintain and repair.



AN IMPROPERLY INSTALLED CULVERT. Subdivision review can help ensure that public facilities are properly designed and constructed. Review of public facilities also can minimize long term maintenance and repair costs by requiring proper installation.

Careful review of street layout can prevent excessively long cul-de-sac streets, dead end streets, and steep grades that often delay fire and ambulance vehicles providing emergency services. In addition, police and sheriff departments point out that traffic hazards can be reduced with sound design of street intersections, and by avoiding confusion among street names. Subdivision review can ensure that proposed new streets or roads be designed and built so that they "fit" the community's current and planned street and road network; thus, reducing traffic congestion.

School districts benefit when development layouts allow school buses to operate efficiently. Proper subdivision design allows safe walking routes between homes and schools. Subdivision regulations help assure that water and sewer systems have mains and fittings that meet the standards of the municipality and are compatible with existing systems.

Private firms involved with real estate financing and title transactions can benefit from subdivision regulations. Banks and other lending institutions know that properly planned and reviewed land developments are sound investments and

better risks for loans than haphazard developments. Also, mortgage insurers, such as the Federal Housing Administration and the Veterans Administration, often require their own standards for land developments, and their concerns are usually met by local subdivision regulations. In addition, the order brought to the land records system by the subdivision approval process will be a definite advantage to lot buyers, title insurance companies, and others involved in title transactions.

Private utilities (power, gas, telephone) benefit from subdivision review because it allows the firms to know that legal easements, proper location of routes, and sensible lot layout will allow ready installation and maintenance of utility facilities.

Developers also benefit. A properly designed subdivision is more marketable and usually brings a higher sale price. Buyers are willing to pay more for lands that provide attractive, well planned building sites, all season access, park and recreation areas, and well designed streets and roads.

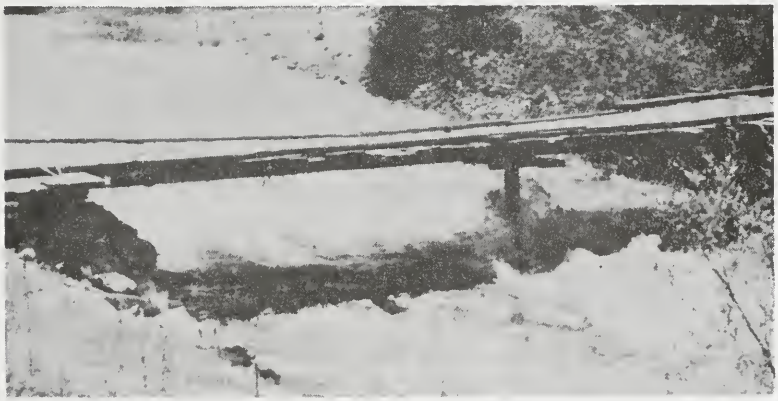
Ultimately, the local taxpayer is the real beneficiary of subdivision regulations. In unreviewed developments, poorly designed roads, sewage systems, and other facilities often must be repaired or rebuilt for safety or health reasons. Often, additional money must be provided by local, state, or national taxpayers to correct major health and safety problems due to poorly designed facilities in unregulated, unreviewed developments. Thus, appropriate local government review and regulation of new subdivisions can save the taxpayers money.

C. ADDITIONAL BENEFITS IN MONTANA

In addition to the previously mentioned benefits, Montana subdivision regulations are one of the most effective land use regulatory tools. In fact, subdivision regulations are the primary local development regulatory device in the state. Subdivision regulations are mandatory, while other land use regulations, such as zoning, are optional for Montana local governments.

We have very little zoning outside of municipalities. Some jurisdictions have not yet adopted county zoning. In addition, the state's county zoning enabling statute makes adoption of zoning regulations in unincorporated areas difficult because it allows 40 percent of freeholders, or 50 percent of the property owners by acreage, to protest the adoption of a zoning proposal. Thus, in Montana, local government subdivision regulation is the primary tool which is used to facilitate development while protecting public health and safety, taxpayers, lot buyers, and the environment.

DEVELOPMENT IN FLOOD HAZARD AREA. Floodwaters breached a levee and inundated this mobile home site located in the floodplain.



UNSUITABLE BRIDGE. This bridge provides access to a residential subdivision. Not only is the structure unsafe for even moderate traffic, it represents potential liability problems, and will create inconvenience and future costs for replacement when it collapses.

ACCESS ROAD. This road serves a residential development that was not subject to subdivision approval. The road is unsurfaced, has an excessive grade and is causing sloughing of the side slope.

UNSTABLE FILL. Decaying limbs and other unstable materials will accelerate the deterioration of this rural residential road.

II. MONTANA LEGAL FRAMEWORK FOR SUBDIVISION REGULATION

By law, each of Montana's 56 counties and 128 municipalities enforce their own local subdivision regulations. In addition, the legal framework has been affected by state Supreme Court decisions, district court decisions, state Attorney General Opinions, and city and county attorney opinions.

Two statutes directly govern land subdivisions and the development of mobile/manufactured home courts and condominiums: the Montana Subdivision and Platting Act (MSPA) and the Montana Sanitation in Subdivisions Act (MSIS). The MSPA requires local governments to regulate the layout and design of land subdivisions, mobile home parks, recreational vehicle parks, condominiums, the construction of improvements within subdivisions, and the surveying and filing of plats and certificates of survey. The MSIS requires that the Montana Department of Environmental Quality (or in some cases qualified local health departments) review and approve plans for the provision of water, sewage disposal, solid waste disposal and drainage facilities related to subdivisions. In addition, the legal framework has been affected by state Supreme Court decisions, district court decisions, state Attorney General Opinions, and city and county attorney opinions.

A. MONTANA SUBDIVISION AND PLATTING ACT, 1973

The Montana Subdivision and Platting Act (76-3-101 et seq., MCA) delegates control over subdivisions to counties and municipal governments. The state has given local governments the power to adopt subdivision regulations, regulate the design of subdivisions, and prohibit subdivisions in areas unsuitable because of health or safety hazards such as flooding, polluted water, high ground water, unstable soils or geology, or other natural or man-made health or safety hazards.

The MSPA requires all municipalities and counties to adopt and enforce local subdivision regulations, and it sets out a list of considerations that those local regulations must address. The act defines as "subdivisions" those land divisions that create parcels less than 160 acres, mobile home parks, recreation vehicle parks and condominiums. Local governments evaluate developments qualifying as subdivisions under the definition above and determine whether to approve, conditionally approve or disapprove the proposed development.

The MSPA requires that the local approval be based on whether the subdivision complies with the standards and requirements of the local subdivision regulations, and that the governing body has issued written findings of fact that weigh the primary criteria. In addition, the act requires local government to determine whether the subdivision conforms to the local comprehensive plan if one has been adopted.

To aid local officials in reviewing proposed subdivisions, the MSPA requires developers of subdivisions with six or more lots to prepare an environmental assessment, intended to provide facts and information regarding the site, and a report on community impacts.

Under the MSPA, major subdivisions must meet a park and playground requirement: 11% of the combined area of those lots less than ½ acre, 7.5% of the combined area of those lots between ½ and 1 acre, 5% of the combined area of those lots between 1 and 3 acres, and 2 ½ % of the combined area of those lots between 3 and 5 acres. There is no park requirement for lots larger than 5 acres. The park requirement can be met, at the discretion of the governing body,

through a dedication of land to the public, a donation of cash-in-lieu of land, or a permanent reservation of land to a property owners' association.

The MSPA promotes procedural due process by setting out public notice and hearing requirements. (Procedural due process is the administrative process a government entity must go through to inform the public and treat citizens, landowners, and developers in a consistent and fair manner.) Except in the case of "minor subdivisions" (subdivisions with five or fewer lots where no park land will be dedicated to the public), a formal public hearing must be held during the preliminary plat approval process. A notice of the hearing must be published in a local newspaper at least 15 days before the hearing, and property owners and holders of contracts for deed to lands adjoining the proposed subdivision must be notified of the hearing by certified mail. When a hearing is held by a planning board, the board must make its recommendation to the governing body within 10 days following the hearing.

Minor subdivisions qualifying for summary review are not subject to the public hearing requirement. However, local governments can comply with constitutional due process requirements and Montana's Open Meeting Law by publishing notice and considering the minor subdivision at a regular meeting, which must be open to the public under Montana law.

Substantive due process is assurance, primarily for the developer, that land use requirements are reasonable, implement local government goals, relate to public health, safety and general welfare and will not result in a "taking" of property by rendering it without economic value. Montana law places responsibility for substantive due process primarily on local units of government as they adopt local subdivision regulations. The Montana Department of Commerce has published a MODEL SUBDIVISION REGULATIONS that suggests not only procedural provisions but also design standards and other substantive provisions to serve as a guide to local units of government in preparing and updating their own local regulations. Property owners have certain constitutional rights that may not be abridged by land use regulations. The U.S. Supreme Court and lower federal courts have established that government land use regulations must incorporate to protect property rights.

B. MONTANA SANITATION IN SUBDIVISIONS ACT, 1961

The Montana Sanitation in Subdivisions Act (MSIS) (76-4-101, et seq., MCA) was first passed in 1961. The impetus for enacting the act originally was to prevent contamination of drinking water by septic systems and cesspools. Its purpose has become broadened over the years to include protecting the public health through the review and approval of proposed water, sewer, solid waste, and drainage in all subdivisions and most land divisions that are exempt from local government review. Condominiums, mobile home and recreational vehicle parks also are subject to sanitation review under MSIS.

Generally, the Montana Department of Environmental Quality (DEQ) approves the sanitation facilities in subdivisions and other land divisions. In 1985 the Legislature amended the MSIS to allow local health agencies that have qualified personnel to accept authority for sanitation approval over certain land divisions. Those include divisions that will create five or fewer parcels with on-site water and sewage disposal facilities and divisions proposed to connect to municipal systems where no extension of the system is needed.

The types of developments subject to sanitation review under the MSIS parallel those required to be reviewed under the MSPA with one major addition. Parcels

that are exempt from local government review under MSPA through use of exemptions such as the "family transfer" still are subject to sanitation approval under the MSIS. Not only are parcels created through such exemptions subject to DEQ review, but any remaining parcels of less than 20 acres that result from use of the exemptions must receive sanitation approval under MSIS.

All final subdivision plats and certificates of survey showing parcels created by the family transfer exemption must have a certification of sanitation approval before they may be filed in the Clerk and Recorder's office. In addition, mobile home and recreation vehicle parks and subdivisions created by rent or lease must receive sanitation approval even though no final subdivision plat or certificate of survey is filed.

C. LEGAL OPINIONS AFFECTING THE MSPA AND MSIS

A large number of Montana Supreme Court and district court cases and Attorney General opinions have shaped the interpretation and enforcement of the MSPA and the MSIS. For the MSPA alone, there are more than 75 separate binding legal rulings. In addition, city and county attorney opinions affect the administration of subdivision regulations by the individual local jurisdictions. Local officials are bound by Supreme Court decisions and by Attorney General Opinions unless those opinions are overruled by Supreme Court decisions. District court decisions, on the other hand, are binding only on the parties involved but do provide useful guidance to other local governments in administering the subdivision laws.

In 1993, the Montana Supreme Court upheld the constitutionality of the MSPA by ruling that by enacting the MSPA the Legislature did not impermissibly delegate its authority to local governments.

The Montana Supreme Court issued a ruling in 1964 that was considered a national precedent. In Billings Properties v. Yellowstone County, the Court upheld a state law allowing local government to require park dedication as a condition of subdivision approval. The Court reasoned that residents of the subdivision create a need for park facilities, therefore requiring dedication of parkland to meet the needs of the subdivision is valid. The ruling was made in response to a challenge of a park dedication provision of the previous subdivision law, Plats of Cities and Towns, which served as the basis for the current park provision in the MSPA.

In 1980, the Montana Supreme Court held that when a governing body reviews and approves a subdivision in violation of Montana's open meeting law, the approval is invalid.

Other key Montana Supreme Court cases affecting the MSPA include a 1975 ruling that certificates of survey are exempt from review by the planning board, and that no fee for reviewing certificates of survey may be charged by the county.

The Montana Attorney General has issued many opinions regarding the MSPA in response to requests for opinions. In one key opinion he defined "immediate family" to mean the spouse of the landowner and the children or parents of the landowner by blood or adoption.

In 1980, the Montana Attorney General held that deeds and contracts for deeds that convey land in violation of the MSPA are voidable. Violations of the MSPA may be corrected by voiding the improper conveyance and conveying the land in accordance with MSPA.

A large percentage of the legal opinions issued by the Montana Attorney General and courts have focused on the use of the exemptions and whether particular uses of the exemptions are "...adopted for the purpose of evading ..." the MSPA.

Montana Attorney General opinions have held that units of local government are empowered to determine the circumstances under which use of the exemptions constitutes an attempt to evade the purpose of the MSPA. The Attorney General issued an opinion in 1983 that, because local governments are empowered to determine when the use of exemptions constitute an attempt to evade the Act, local officials are authorized to establish procedures to evaluate a proposed exemption to determine if it is an attempted evasion of the Act. The local government may require a person claiming an exemption from subdivision review to furnish evidence of entitlement to the claimed exemption. Because exemptions of statutes pertaining to the health, safety, and welfare of the public should be narrowly construed, a party claiming an exemption from subdivision review has the burden of proving his entitlement to the exemption.

In 1989, the Montana Supreme Court ruled that local subdivision regulations may not set out a per se or automatic rule to determine when a proposed use of the exemption is an evasion of the act.

Finally, in 1993, the Montana Supreme Court held that locally adopted criteria for determining whether an exemption from subdivision review is being invoked for the "purpose of evading" the Act, which establish rebuttable presumptions of evasion in certain circumstances, do not violate constitutional guarantees of due process.

A complete list and brief description of the legal opinions presented here and other legal opinions issued by the Montana Attorney General and the courts can be found in the booklet entitled Montana's Subdivision and Surveying Laws and Regulations, which is published by the Montana Department of Commerce, Community Technical Assistance Program.

III. SUBDIVISIONS AND "EXEMPTIONS"

Under the Montana Subdivision and Platting Act (MSPA) there are two fundamental categories of land divisions: subdivisions and exemptions (exemption parcels). There are different types of subdivisions. In addition, there are different types of exemptions. Before a local government representative can determine how to administratively process a land division proposal from a developer or landowner, the local government must first determine whether the proposal is a subdivision or an exemption. Statutory requirements and procedures for subdivision review are much different from the statutory requirements and procedures for processing exemptions.

A. SUBDIVISIONS

Subdivisions are those land divisions which require subdivision review and approval by the governing body. An approved subdivision plat must be filed with the county clerk and recorder before title to lots can be transferred.

The MSPA [76-3-103(14), MCA] defines a "subdivision" as:

> A division of land, or land so divided, that creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed. This includes any re-subdivision, condominium or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes.

There are two fundamental categories of subdivisions: "minor" subdivisions and "major" subdivisions. A "minor" subdivision is defined as a subdivision containing five or fewer parcels in which proper access to all lots is provided and in which no land is to be dedicated to the public for parks or playgrounds (See 76-3-609, MCA). A "major" subdivision is considered to be a subdivision containing six or more parcels.

In addition, minor and major subdivisions can be further classified as:

* Residential, Commercial or Industrial Subdivisions;
* Subdivisions For Rent or Lease (e.g. Mobile Home Parks, RV Parks);
* Planned Unit Development Subdivisions ("PUD's");
* Amended Subdivisions (Amended Plats).

An individual subdivision proposal can be a combination of these categories and classifications. For example, there are minor residential subdivisions, major amended plats of commercial subdivisions, major mobile home park subdivisions, and so on. Different types of subdivisions are subject to different statutory requirements and different local government review requirements. A local government's subdivision regulations should provide procedures and requirements for each general type of subdivision. The Advisory Model Subdivision Regulations published by the Department of Commerce Community Technical Assistance Program, provides a detailed advisory guide to statutory requirements and suggested local government review procedures for the various types of subdivisions.

Surveying Requirements for Subdivisions--Except for subdivisions created by rent or lease, including mobile home and recreational vehicle parks, and condominium

developments which do not involve a division of land, every subdivision must be surveyed and a plat of the subdivision filed with the county clerk and recorder.

B. EXEMPTIONS

Under the Montana Subdivision and Platting Act (MSPA) exemptions are divisions of land which are not subject to local government review and approval as subdivisions. There are two general types of exemptions: those for which a survey is required and those for which no survey need be done.

The local governing body must determine whether a claimed use of an exemption meets the statutory requirements for that exemption and, in most cases, whether the exemption is being invoked for the "purpose of evading" the MSPA. If, in the judgement of the governing body, the use of the exemption fails to satisfy either of these criteria, the division of land is subject to review as a subdivision. In making this determination, many local governments have found it helpful to use a committee when they check proposed exemption parcels for legal compliance with state statutes and case law. This committee generally includes the county attorney, county clerk and recorder, planner, and county sanitarian.

For detailed information on each exemption, including legal requirements, see A Guide To The Exemptions and the Advisory Model Subdivision Regulations (Appendix K describes exemption evasion criteria procedures). Both of these booklets are published by the Community Technical Assistance Program.

1. Exemptions Not Subject To Review As Subdivisions Which Require a Survey

The following divisions of land are subject to the Act's surveying requirements but not its review requirements:

* Any land division creating new parcels 160 acres or larger that cannot be described as a 1/32 or larger aliquot part of a government section;
* A single gift or sale in each county to each member of the immediate family;
* Relocation of a common boundary between parcels; and
* Creation of a parcel to be used strictly for agricultural purposes, *whether by gift, sale or agreement to buy and sell.*

As a general rule these exemptions are not available to create additional lots within a platted subdivision. All of these divisions of land must be surveyed by a registered land surveyor, and a certificate of survey filed with the county clerk and recorder before the clerk and recorder may record transfers of the parcels created.

2. Exemptions Not Subject to Review As Subdivisions Which Do Not Require a Survey

These types of exemptions do not require a survey. First, parcels that are 160 acres or more and that can be described as 1/32 or larger aliquot parts of a section need not be surveyed [see diagram on next page]. Second, the divisions of land, regardless of size, need not be surveyed if they:

* Have been created by a court order or operation of law;
* Could be created through eminent domain;

* Provide security for construction loans or mortgages [1]
* Separate interest in oil, gas, minerals, or water from surface ownership;
* Create cemetery lots;
* Create a reservation of a life estate;
* Create parcels for lease or rental as farming or agricultural land;
* Have been acquired for state highways and may be described by reference to highway plans on file; or
* Invoke state-owned land and do not create more than one parcel from a single tract for residential purposes.

DIAGRAM: ALIQUOT PARTS OF A SECTION

This diagram shows Section 11 divided into 4 quarter sections. Quarter sections are called 1/4 aliquot parts,meaning 4 equal parts.

The highlighted quarter section is called the northwest quarter of Section 11, written as NW 1/4 of Section 11.

The southwest quarter (SW 1/4) is further divided into 4 quarter-quarter sections (or 1/16 aliquot parts of a section).

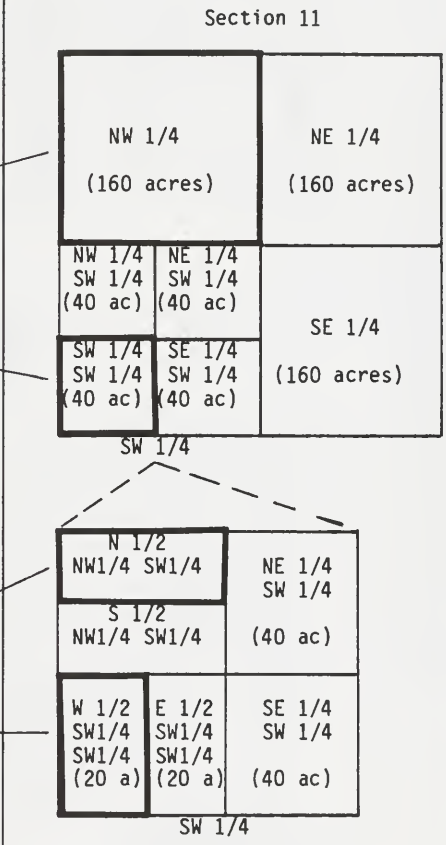
The highlighted quarter-quarter section is called the southwest quarter of the southwest quarter (SW 1/4 SW 1/4 of Section 11).

This insert shows the SW 1/4 of Section 11 divided into 4 quarter-quarter sections. The NW 1/4 SW 1/4 has been divided into halves.

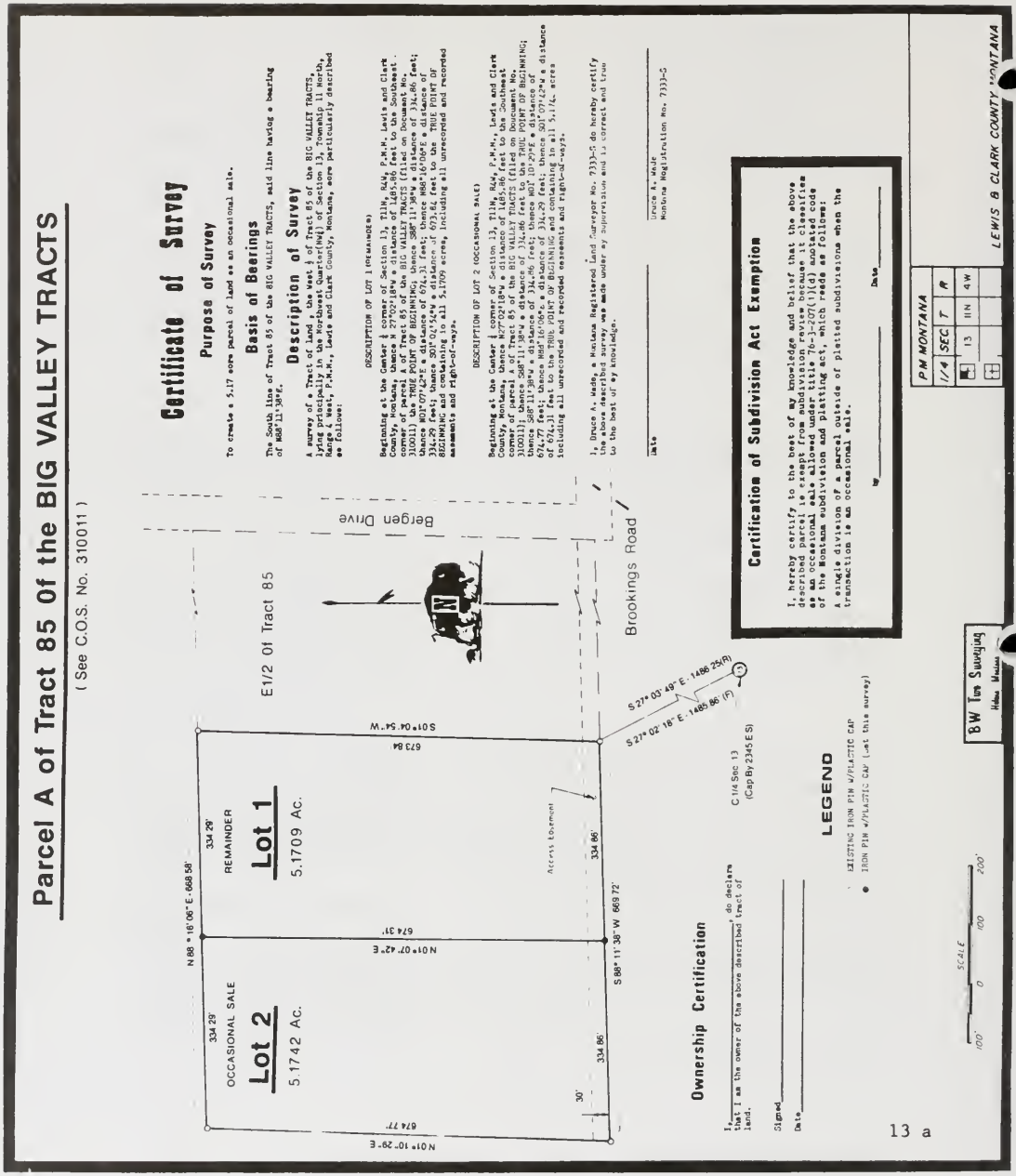
This tract is the north half of the northwest quarter of the southwest quarter, written N 1/2 NW 1/4 SW 1/4 of Section11.

This tract is the west half of the southwest quarter of the southwest quarter, or W 1/2 SW 1/4 SW 1/4 of Section 11.

Each of these highlighted tracts is 1/32 aliquot part of a section.



[1] *The "mortgage exemption" is not required to be surveyed under state statutes; however, banks and financial institutions often will require a survey to be prepared and filed with the county.*


Parcel A of Tract 85 of the BIG VALLEY TRACTS
(See C.O.S. No. 310011)
Certificate of Survey
Purpose of Survey
To create a 5.17 acre parcel of land as an occasional sale.
Basis of Bearings
The South line of Tract 85 of the BIG VALLEY TRACTS, said line having a bearing of N88°11'38"E.
Description of Survey
A survey of a Tract of land, the West ½ of Tract 85 of the BIG VALLEY TRACTS, lying principally in the Northwest Quarter(NW¼) of Section 13, Township 11 North, Range 4 West, P.M.M., Lewis and Clark County, Montana, more particularly described as follows:
DESCRIPTION OF LOT 1 (REMAINDER)
Beginning at the Center ¼ corner of Section 13, T11N, R4W, P.M.M., Lewis and Clark County, Montana, thence N 27°02'18"W a distance of 1485.86 feet to the Southeast corner of parcel A of Tract 85 of the BIG VALLEY TRACTS (filed on Document No. 310011) the TRUE POINT OF BEGINNING; thence S88°11'38"W a distance of 334.66 feet; thence N01°07'42"E a distance of 674.31 feet; thence N88°16'06"E a distance of 334.29 feet; thence S01°02'54"W a distance of 673.84 feet to the TRUE POINT OF BEGINNING and containing in all 5.1709 acres, including all unrecorded and recorded easements and right-of-ways.
DESCRIPTION OF LOT 2 (OCCASIONAL SALE)
Beginning at the Center ¼ corner of Section 13, T11N, R4W, P.M.M., Lewis and Clark County, Montana, thence N27°02'18"W a distance of 1485.86 feet to the Southeast corner of parcel A of Tract 85 of the BIG VALLEY TRACTS (filed on Document No. 310011) the TRUE POINT OF BEGINNING; thence S88°11'38"W a distance of 334.66 feet; thence N01°07'42"E a distance of 674.77 feet; thence N88°16'06"E a distance of 334.29 feet; thence S01°07'42"W a distance of 674.31 feet to the TRUE POINT OF BEGINNING and containing in all 5.1742 acres including all unrecorded and recorded easements and right-of-ways.
I, Bruce A. Wade, a Montana Registered Land Surveyor No. 7333-S do hereby certify the above described survey was made under my supervision and is correct and true to the best of my knowledge.
Date
Bruce A. Wade
Montana Registration No. 7333-S
Certification of Subdivision Act Exemption
I, hereby certify to the best of my knowledge and belief that the above described parcel is exempt from subdivision review because it classifies as an occasional sale allowed under title 76-3-207(1)(d) annotated code of the Montana subdivision and platting act, which reads as follows:
A single division of a parcel outside of platted subdivisions when the transaction is an occasional sale.
by
Date
Ownership Certification
I, _____ do declare that I am the owner of the above described tract of land.
Signed
Date
LEGEND
EXISTING IRON PIN W/PLASTIC CAP
IRON PIN w/PLASTIC CAP (set this survey)
C 1/4 Sec 13 (Cap By 2345 ES)
Lot 2
OCCASIONAL SALE
5.1742 Ac.
Lot 1
REMAINDER
5.1709 Ac.
E1/2 Of Tract 85
Bergen Drive
Brookings Road
Access Easement
N 88° 16' 06" E - 668.58'
N01° 10' 29" E
674.77'
N01°07'42"E
674.31'
S88° 11' 38" W 669.72'
S01°04'54"W
673.84
S 27° 03' 49" E - 1486.25'(R)
S 27° 02' 18" E - 1485.86' (F)
334.29'
334.66'
30'
334.66'
334.29'
100' 0 100' 200'
SCALE
13 a
8 W Tim Surveying
Hilton Montana
P.M. MONTANA
1/4 SEC 13 T 11 N R 4 W
LEWIS & CLARK COUNTY MONTANA

IV. BASICS OF PROPER SUBDIVISION DESIGN

Proper subdivision design and construction may be the most important result of subdivision regulations. Good subdivision design requires an understanding of basic elements in creating functional, balanced, convenient, safe and pleasant neighborhoods. Achieving a well designed subdivision depends not only on technical knowledge, but also on coordination among the activities of the subdivider, governing body, planning board, other officials, and the general public.

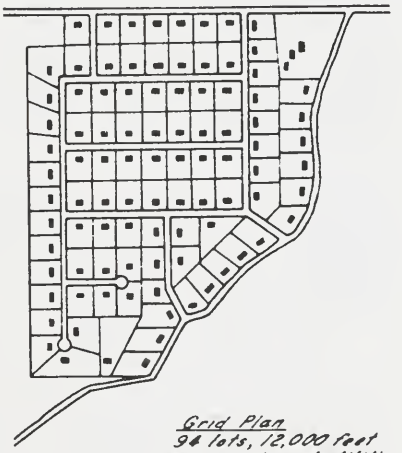
The MSPA is not intended to give local government the authority to impose design standards that are excessive or unrealistic. Design standards should bear a reasonable relation to the need for protection of public health and safety, and also should meet the community's land use and development objectives. It is, however, in the best interest of the community and residents that proper review be provided to achieve the optimal design for each building site. The initial land divisions and the decisions made by the local government regarding those divisions will permanently influence the future character of the community.

Design standards will vary from community to community, but a number of basic design concepts apply virtually everywhere. Local officials should adopt specific standards only after careful study and evaluation to assure that they are tailored to each community and its needs and conditions.

A. BASIC SUBDIVISION DESIGNS

Although an infinite number of variations can be derived, subdivision design can be categorized into three basic concepts: grid, curvilinear, and cluster.

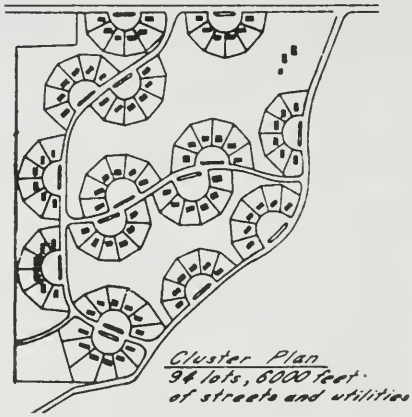
The **grid system** is a traditional design for subdivisions and townsites in Montana. It uses streets and lots at right angles and forms a grid pattern. The grid system has a number of drawbacks. It requires the greatest length of roads and utilities, creating greater costs for initial construction and maintenance. This system encourages through traffic with the added noise, dust and hazards, and it creates a maximum of hazardous four-way intersections. It also is inappropriate in hilly or steep areas where street and lot layout should complement the terrain to minimize cutting, filling, and drainage crossings. To overcome these drawbacks, narrower street widths, traffic circles, and speed bumps can be used to help slow traffic, increasing safety and encouraging pedestrian use.



The **curvilinear** system incorporates curves and bends in the lot and street layout. The layout of lots and streets can be tailored to the natural terrain, reduce the number of drainage crossings, add variety to the development, and serve the same number of lots with fewer miles of roads and utilities.

The **cluster**, or open space, design organizes smaller lots into groups or clusters. The subdivider can concentrate development in areas where topography, geology and soils are most suitable for building. The less suitable areas can be left in their natural or open state as common area for parks or open space.

The major advantage is that it allows high quality development at minimum cost. The miles of streets and utilities can be greatly reduced, saving both installation and maintenance costs. Greater variety of layout, preservation of natural features, and provision of open space are offered by the cluster design.



In reality, good subdivision designs make use of elements of all three basic concepts. In rural areas and in hilly terrain cluster and curvilinear design can make more efficient use of space, roads and utilities, and can be used to preserve natural features and terrain. In Montana, however, much of the subdivision activity occurs adjacent to, or near, cities and towns and must tie into the existing grid patterns that characterize municipalities.

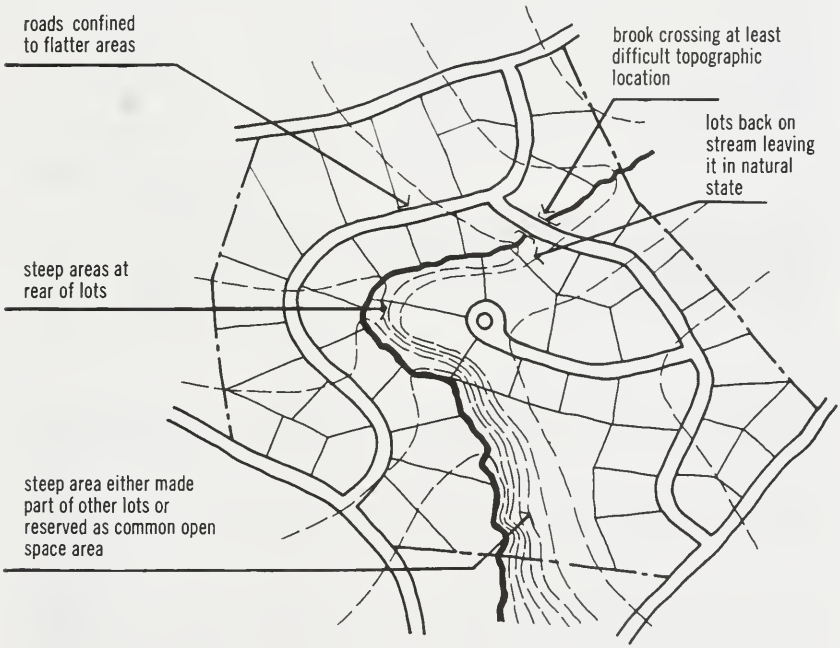
B. PHYSICAL CHARACTERISTICS OF THE SITE

The effect of an area's physical characteristics is an important factor that must be considered in designing and reviewing any subdivision. Soils, geologic conditions, slopes, streams, drainages, water table, and susceptibility to wildfire all affect the cost of construction and long term maintenance of houses and improvements. In many cases, these factors are so important that they determine whether a site is even suitable for development.

PROPER SUBDIVISION DESIGN NECESSARILY BEGINS WITH A THOROUGH UNDERSTANDING OF THE NATURAL TERRAIN AND FEATURES, AND A COMMITMENT TO PLAN AND DESIGN THE DEVELOPMENT IN COMPATIBILITY WITH THOSE NATURAL FEATURES.

Steep slopes present special problems for development, especially where the slope is composed of unstable or highly erodible soils. To avoid sloughing or slumping, care must be taken not to cut the toe of the slope in constructing roads or homesites.

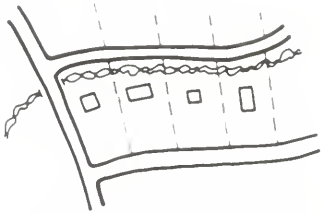
Slopes affect the location of building sites, septic systems and roads. Level areas are preferred locations for building sites because less cutting and filling is needed. Slope also affects the operation of septic systems. To avoid a possibility of septic tank effluent reaching the surface of the ground in steep terrain, health regulations limit the allowable slope that may be used for drainfields, usually to less than 15 percent. The design and development of subdivisions should preserve the unique character of an area, its natural terrain, drainage, existing topsoil, trees and natural vegetation to the maximum extent possible.


roads confined to flatter areas
brook crossing at least difficult topographic location
lots back on stream leaving it in natural state
steep areas at rear of lots
steep area either made part of other lots or reserved as common open space area

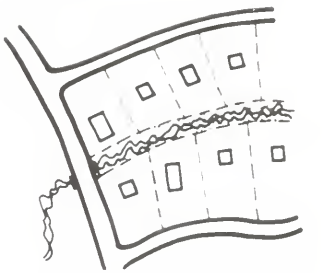
Design and construction of roads is greatly affected by the terrain. In steep terrain, constructing roads diagonally across natural contours minimizes cutting and filling, thus reducing the costs for culverts and dirt moving and minimizing the chances of sloughing. Roads built parallel to the slope have excessive grades and tend to accelerate erosion and create problems with storm runoff.

Roads planned to minimize the number of natural drainage crossings require less design work and fill. Where a road crosses a drainage, a culvert or bridge of sufficient size is necessary to avoid washing and erosion. Adequate culverts or bridges are necessary where roads cross streams. When inadequate culverts are used, are improperly installed, or no culverts are installed, erosion and subsequent costly repairs result. Roads may be damaged by erosion if proper culverts, bridges, and other drainage facilities are not designed and constructed properly.

Riparian areas, those areas adjacent to streams, lakes or wetlands, should be carefully considered in subdivision design. These areas provide important wildlife habitat, help maintain fish and aquatic resources, and preserve water quality and quantity. Where a stream or drainage crosses the middle of a lot, useable space within the lot is greatly reduced. By aligning lot lines along the center of the streambed or drainage, more desirable and useable lots can be created. An adequate sized building lot can be ensured by enlarging the lot to allow an easement, or an open space or parkland dedication along the stream or drainage.

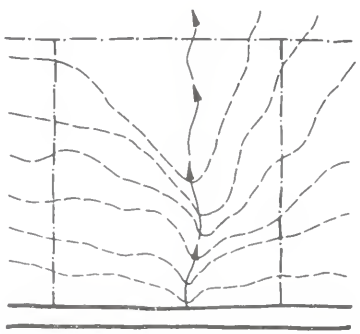


Poor lot layout along stream wastes land and minimizes access

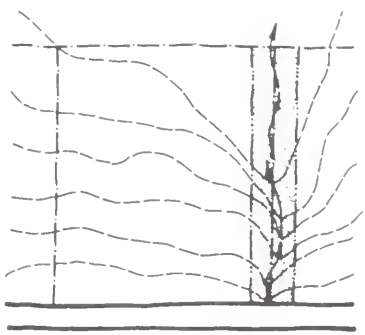


Stream along rear lot line improves access for homeowners

The natural stream bank can be preserved by locating streams along side or rear lot lines, and the lot owners can avoid costly driveway culverts or bridges that are needed when lots front on the stream.



Poor drainage pattern through the center of a lot



The drainage pattern is improved by arranging lot lines so that drainage occurs along the lot line

Areas subject to frequent flooding make poor building sites. Not only is damage from flood waters a concern, but frequently those areas have high water tables, which affect basements and the proper functioning of septic systems. Flood waters are a concern for septic systems because of the possibility for siltation and erosion that can destroy a drainfield. Also, obtaining insurance for buildings located in flood hazard areas can be difficult.

Often, flood hazard areas can be utilized for parks, open space, or by oversizing lots and allowing the rear yard space to extend into the flood prone area.

Areas which flood should be included in the rear portion of oversize lots, or left as open space.

C. STREET AND LOT LAYOUT

Road systems within a subdivision ideally exhibit five characteristics:

(1) The roads allow safe and convenient access to each lot;
(2) Each road serves a definite function;
(3) The roads are located and designed to minimize the impact on the natural terrain;
(4) The road layout provides convenient motorized and non-motorized travel throughout the subdivision; and
(5) The road layout is coordinated with the road patterns of the community.

The principal functions of residential roads are to provide access to individual lots, to accommodate their prospective traffic volumes, and to allow safe and convenient entry and travel for emergency vehicles and snow removal and road maintenance equipment.

The function that a street is intended to serve will determine both its right-of-way width and its pavement width. A street serving a high density subdivision may need wider pavement than one which serves a low density residential area. Both greater volumes of traffic and a higher likelihood of on-street parking create the need for a wider road. Collector and arterial streets carry more traffic volume, usually at higher speeds, and must be wider and built with a more substantial base and surfacing.

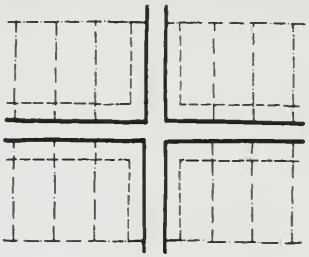
Street widths can have a significant impact on traffic speed and pedestrian safety. Narrower streets, particularly when used in conjunction with boulevard sidewalks, can create a "pedestrian friendly" environment, encouraging non-motorized travel and providing accessibility for persons with disabilities.

Right-of-way widths are affected by the need for wider pavement, snow storage areas, pedestrian access (sidewalks, walkways and accessibility for disabled persons), bike lanes, utilities, street lights and fire hydrants.

Within any of the three basic subdivision design concepts, a number of specific design features are desirable. Lots that are approximately rectangular generally have the most useable space and avoid unusual corners, points or remote areas that cannot be used effectively as part of a building site. Often topography, street layout and the configuration of the original tract dictate that many lots cannot be rectangular. However, in most cases, careful design can eliminate most

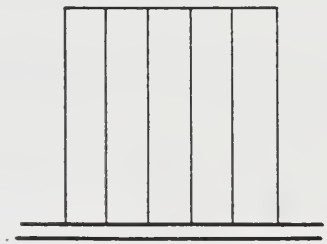
odd-shaped lots with excessive jogs, extreme angles and unusable portions. Lots almost always can be designed to allow side lot lines to be roughly perpendicular to frontage streets.

Corner lots that are larger than interior lots provide an adequate building site even with setbacks on two sides. Through lots --those with street frontage on the front and the rear-- are undesirable because of reduced privacy and increased exposure to traffic.

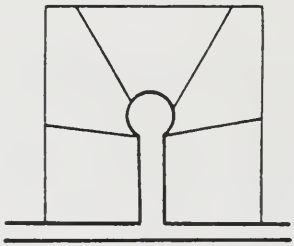


Corner lots should be wider so that distance equal to a front set-back can be allowed between the building and both streets.

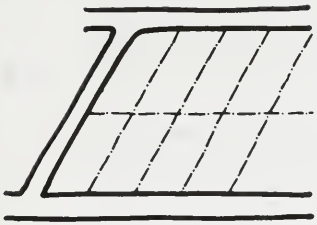
Lots whose length does not exceed 3 times their width usually have a maximum percentage of useable space. When developing an odd shaped tract fronting on an existing road, excessively deep lots can be avoided by designing a cul-de-sac that provides access to more desirably shaped lots.



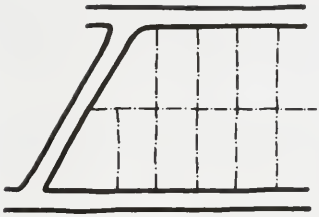
Excessively Deep lots



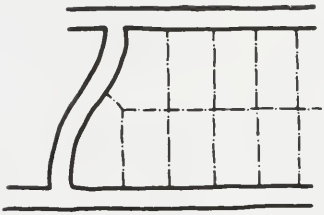
More desirable lots with use of a Cul-de-sac.



Angled lot lines and intersections should not be allowed.

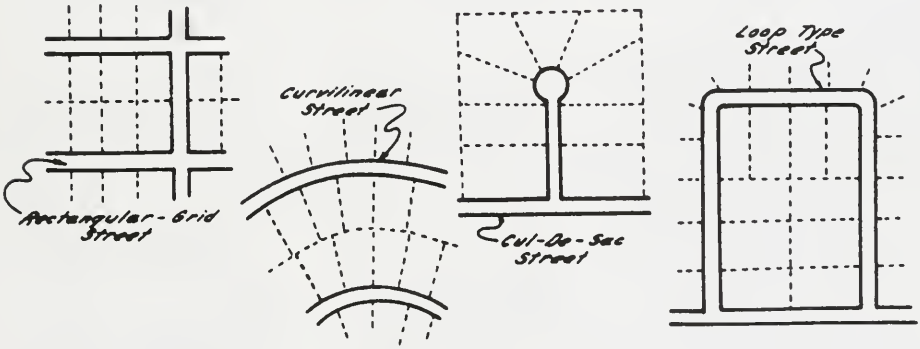


Improved lot layout



Improved lot layout and better intersection design.

Traffic safety is greatest where the angle of street intersections approximates 90 degrees. Even with curvilinear street design, approximate right angle intersections are possible.



Proper road networks can be designed under a variety of lot layouts.

V. ELEMENTS OF LOCAL GOVERNMENT REVIEW AND APPROVAL

The Legislature has provided procedures under which a proposed subdivision must be reviewed. The procedures are intended to assure that the governing body has sufficient time and information to adequately review the proposal and make a decision that will protect the interests of the general public. The statutory procedures also try to protect the rights of the subdivider by assuring that the process is completed as expeditiously as possible in order that a decision is made with a minimal delay.

The procedures required under MSPA provide for adequate preparation by both the subdivider and the local government to assure development of quality subdivisions that meet the objectives of the subdivider, the community and the future residents of the proposed subdivision.

The local subdivision review process can be described as a three-phase procedure:

(1) Pre-application review;
(2) Preliminary plat review; and,
(3) Final plat approval and filing.

PHASE 1 ⇒ PRE-APPLICATION

Subdivider:
- submits Pre-application

⇓

Subdivision Administrator (or Planning Board):
- meets with subdivider
- discusses requirements, procedures
- familiarizes the subdivider with the applicable goals and objectives of the planning board and governing body
- identifies policies which create opportunities and pose significant constraints for the proposed development
- inspects site (optional)

PHASE 2 ⇒ PRELIMINARY PLAT

Subdivider:
- submits Prelim. Plat Application

⇓

Other Agency Review
- Applicable agencies (DEQ, FWP, Schools, etc.) review app. and provide comments to the subdivision administrator

⇓

Sub. Administrator:
- reviews application
- publishes notice
- notifies adjacent property owners
- inspects site
- prepares staff report

⇓

Planning Board:
- holds hearing
- makes recommendation

⇓

Governing Body:
- makes final decision on preliminary plat

PHASE 3 FINAL PLAT

Subdivider:
- submits Final Plat Application

⇓

Sub. Administrator:
- reviews application
- works with subdivider on full compliance
- makes recommendation

⇓

Governing Body:
- gives final approval

⇓

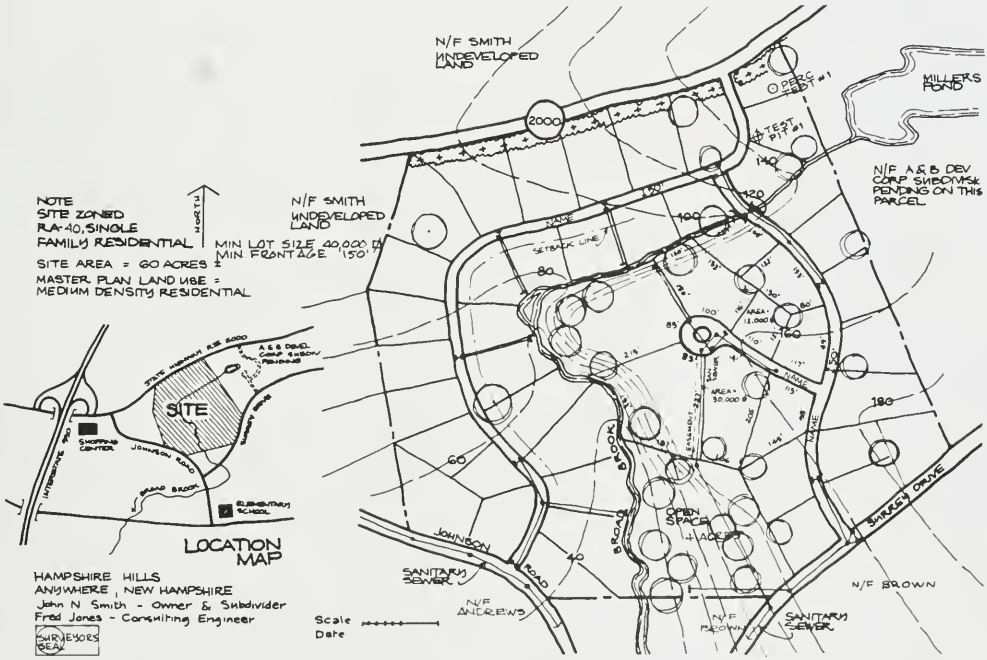
Clerk and Recorder:
- examines final plat
- files, if in compliance

A. PRE-APPLICATION MEETING

In local regulations, the governing body should require the subdivider to participate in a pre-application conference with the planning staff or planning board before preparing a preliminary plat. The pre-application meeting enables the planning staff or board to brief the subdivider on the local subdivision regulations and the standards and procedures the local government uses to review and approve a subdivision. Also, they can advise the subdivider of any inherent problems his proposal may encounter during the preliminary plat review process.

Local subdivision regulations should outline the information that is desired at the pre-application meeting. Typically, the applicant presents a sketch plan that shows the approximate layout of proposed lots, roads, culverts, bridges, access routes, water and sewer facilities, utility and other rights-of- way, parks and open space, and other facilities. The sketch plan also should show existing roads, buildings, improvements, adjacent land uses and surface waters. The sketch plan should be legibly drawn and show, in simple form, the layout of the proposed subdivision. It may be a freehand sketch made directly on a print of the topographic map, if such a map is available. The sketch should also note the scale.

A SAMPLE SKETCH PLAN



The subdivision administrator should be prepared to discuss all the requirements and standards that a proposed subdivision must meet. For example, at the pre-application meeting, the subdivider can be alerted to the requirements of local governmental units such as the fire, solid waste, and weed management districts, and the municipalities (where applicable), as well as those of the county. The primary criteria used to evaluate a proposal should be discussed with the subdivider along with any standards that the governing body might use to evaluate the proposal.

The pre-application meeting can be very beneficial to the subdivider, not only by acquainting him with the local regulations, but also by identifying appropriate changes in design that can be made before considerable time and expense is invested, and by determining how the proposal might conform to the comprehensive plan and the primary criteria.

B. PRELIMINARY PLAT

The following describes the process for reviewing and approving the preliminary plat for a subdivision containing six or more lots. Minor subdivisions (those containing five or fewer lots) are reviewed under a different process. The procedures for reviewing and approving minor subdivisions and other special types of subdivisions are outlined at the end of this chapter.

At this time, or after the application has been formally submitted, the governing body may request review of the proposed subdivision by other agencies, such as the fire authority, law enforcement, schools, or conservation district. This review must be carried out prior to the public hearing.

To formally initiate the process of review and approval, the subdivider is required to submit certain information. The MSPA sets out the basic framework for the required information and allows the local government to specify in its subdivision regulations exactly what must be submitted by the subdivider.

THE PRELIMINARY PLAT REVIEW AND APPROVAL PHASE IS THE MOST IMPORTANT PHASE OF THE SUBDIVISION APPROVAL PROCESS. This is the one phase in the entire approval process that allows the local government to require changes in the proposal, or to deny a proposal, before the subdivider has invested significant time and money in developing the project.

---

1. Submittal of Application

The subdivider submits an application for preliminary plat approval. The content of the required information is specified in the local regulations to assure that sufficient information is provided to allow adequate review. The subdivider, however, may elect to use the DEQ/Local Government Joint Application Form to submit the information required for preliminary plat approval in addition to information required within the local subdivision regulations.

The Joint Application Form and the Department of Commerce Advisory Model Subdivision Regulations both set out the information typically required:

- **A Preliminary Plat** is a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, boundaries, utility easements, proposed improvements, parklands, floodplain boundaries, location of existing

buildings, structures and improvements, gross and net areas, and the zoning designation of the land to be subdivided, including surrounding properties;

- **A Location or Vicinity Map** shows the location of the subdivision within the jurisdiction and its relationship to the overall community and to local services and facilities;

- **A Contour or Topographic Map** shows how the subdivision will affect the natural terrain and also how drainage and storm run off will be addressed;

- **An Environmental Assessment** (1) provides the physical information on the proposed development site regarding soils, geology, surface and ground water, slopes, vegetation, wildlife, historic sites and visual features; and (2) describes the effects of the proposed subdivision on local government services such as water supply, sewage disposal, solid waste disposal, roads, utilities, schools, emergency services, land use and housing.

- **Covenants and Deed Restrictions, if applicable.**

- **Preliminary Drainage and Grading Plans.**

- **Preliminary Road Plans, including right-of-ways or road easements.**

- **Overall Development Plan, if development is to be phased.**

The purpose of the environmental assessment is to ensure that both the local government and the subdivider consider the environmental and community impacts of the proposed development. That information can help in implementing measures to avoid or mitigate adverse effects.

The requirement for submitting an environmental assessment does not apply to the first minor subdivision from a tract, and all or part of the assessment may be waived by the planning board for other minor subdivisions and subdivisions that comply with an adopted comprehensive plan or contain fewer than 10 parcels and encompass less than 20 acres.

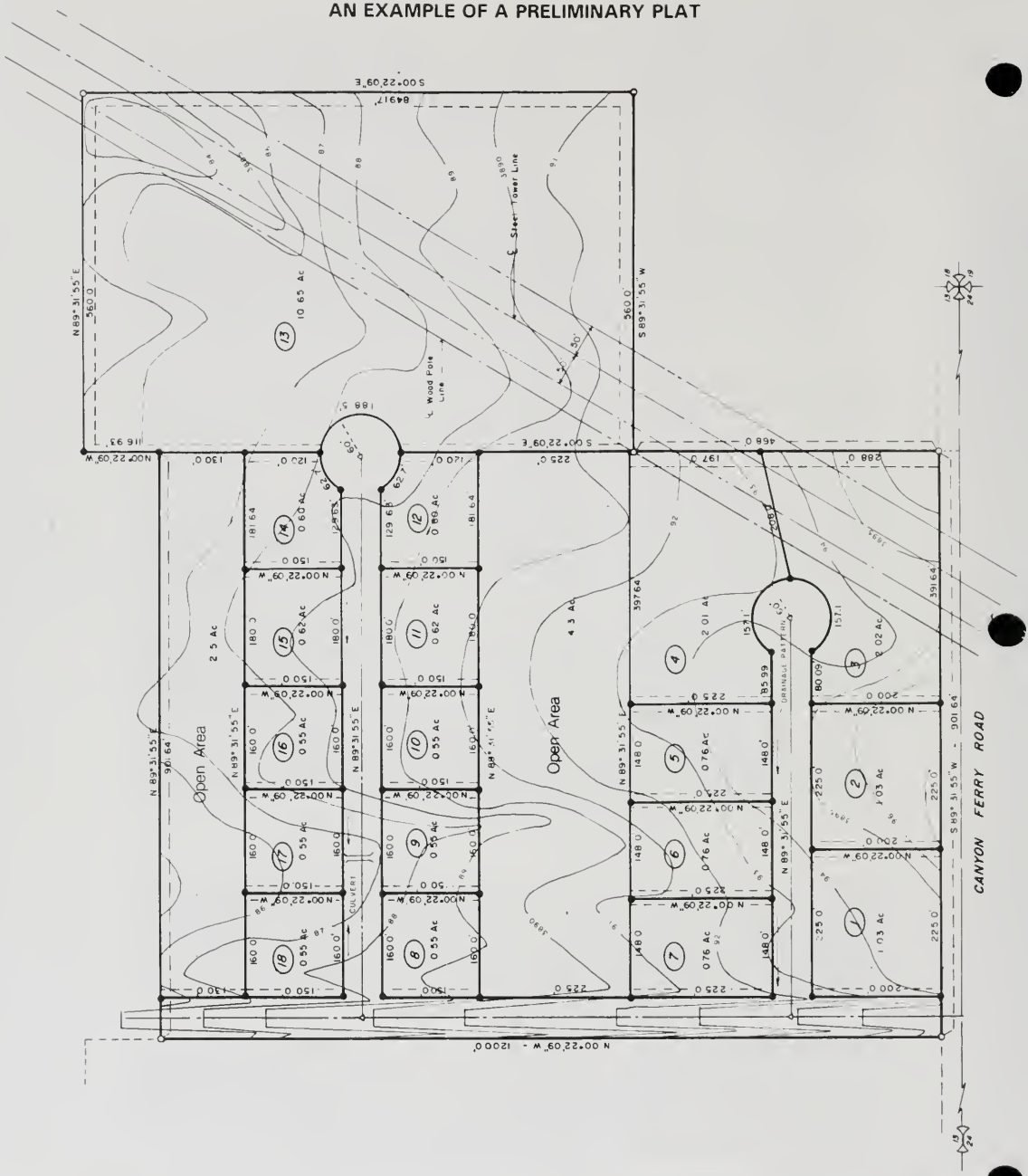
The assessment can be completed by the subdivider using existing information rather than having to conduct field studies to collect original data. Most subdividers will find that contracting with experienced consultants to prepare the assessment can prevent delay and confusion.

2. Review of Plat and Application

After a complete preliminary plat application is submitted (the subdivision administrator or planning board can be given discretion to reject incomplete applications) the local government has 60 days in which to complete the review of the preliminary plat and make a decision to approve, conditionally approve or disapprove the plat. For the first minor subdivision from a tract the governing body has 35 days for review before taking final action. The subdivider may consent to an extension of the review period.

Local officials are required to hold a public hearing on the proposal within that 60 day period and must publish notice of the hearing in a newspaper of general circulation at least 15 days prior to the hearing. The adjacent property owners also must be notified of the hearing by certified mail. [A governing body may not hold a public hearing for the first minor subdivision from a tract.] Opinions and statements may be made orally or in writing at the public hearing.

AN EXAMPLE OF A PRELIMINARY PLAT



Typically, the governing body has adopted review procedures that require copies of the preliminary plat application be submitted to affected utilities and to local agencies and officials, such as school and fire districts, conservation districts, sheriff's or police departments, road supervisors and directors of public works. The officials are asked to comment on how the subdivision would affect their services. Copies of the plat and application also can be sent to state or federal agencies such as the Montana Department of Fish, Wildlife and Parks, Bureau of Mines and Geology, U.S. Soil Conservation Service, Department of Environmental Quality and Department of Natural Resources and Conservation for their review and comment.

Comments on the application by local, state and federal agencies are especially useful for those units of local government that have a minimal, or no, professional staff to assist them.

The planning board is required to make a written recommendation to the governing body within 10 days after the public hearing (if a hearing is held). The board recommends that the subdivision be approved, conditionally approved or disapproved, basing its recommendation on those considerations as explained below in Basis of Preliminary Plat Approval.

Upon receiving the recommendation from the planning board, the governing body must approve, conditionally approve or disapprove the preliminary plat application within the statutory 60 days of the date the application was submitted. The review period may be extended beyond the statutory time limit by a written agreement between the planning board or governing body and the subdivider. The governing body may withdraw approval of a plat if it determines that information provided by the subdivider was false or inaccurate. Once the Preliminary Plat has been approved, the governing body may not require additional conditions as a prerequisite for final plat approval.

A local government may take one of three actions with regard to the preliminary plat:

a. Conditional approval. The governing body may conditionally approve a subdivision, in which case it must specify in writing the conditions that must be met before a final plat will be approved. A copy of the conditions must be sent to the subdivider. The local government must document the reasons for the conditions. Conditions for approval may include such items as: design changes the governing body requires, certain accompanying documents, Department of Health approval, or off-site improvements that serve the subdivision.

b. Approval. The governing body has the option to approve the preliminary plat, which allows the subdivider to proceed in preparing and submitting the final plat without meeting any additional conditions.

c. Disapproval. The governing body should disapprove the subdivision if it finds that the preliminary plat, applicable environmental assessment, public hearing, planning board's recommendations, or additional information demonstrates that development of the subdivision would not meet the requirements of the MSPA or the local subdivision regulations. Subdivision denial ends the review process, and the governing body must send a written statement to the subdivider outlining the reasons the subdivision was disapproved.

After the governing body approves or conditionally approves a preliminary plat, the approval is in force for a period of one to three years at the discretion of the

governing body. At the end of the preliminary plat approval period, the governing body, upon request of the subdivider, may grant a one year extension. The governing body may grant an extension for a longer period if the extended period is included as a condition of a written subdivision agreement between the governing body and the subdivider.
The purpose of a longer preliminary plat approval period is to accommodate phased development of large subdivisions.

When the preliminary plat is approved or conditionally approved, the governing body may not impose any additional conditions or requirements as a prerequisite for final plat approval.

3. Basis of Preliminary Plat Approval

The governing body, in making its decision, needs to consider the information contained in the preliminary plat application, the environmental assessment, and comments received from the general public, utilities, and local, state and federal agencies. The governing body must issue a written Findings of Fact that discusses and weighs the following criteria (pursuant to 76-3-608, MCA):

a. Effect on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and the public health and safety;
b. Compliance with the requirements of the MSPA, and the regulations and review procedures of these local subdivision regulations;
c. The provision of easements for the location and installation of any needed utilities; and
d. The provision of legal and physical access to each parcel within the subdivision and the notation of that access on the applicable plat and any instrument transferring the parcel.

In addition to the primary criteria set forth in 76-3-608, MCA, the MSPA requires local officials to determine whether a subdivision would conform to a local comprehensive plan if one has been adopted. The governing body may require that a subdivision comply with the local comprehensive plan, which can help local officials prepare a Findings of Fact that weighs imprecise criteria such as impacts on wildlife and wildlife habitat, impacts on natural environment, and impacts on public health and safety. Proposed subdivisions must also conform to zoning, floodplain and other regulations.

C. FINAL PLAT APPROVAL

The subdivider has from one to three years (a longer time if the preliminary plat approval period is extended) to prepare and submit a final plat for filing with the county clerk and recorder. The final plat is a scaled drawing showing the boundaries, lot lines, rights-of-way, and placement of survey monuments. A field survey of lots, boundaries, and roads must be made by a registered land surveyor, and that survey is the basis for preparing the final plat.

In addition to the final plat itself, the subdivider is required to submit other documents: a certificate of title, required covenants and deed restrictions, and final plans for improvements, grading and drainage. Also required are certifications stating that property taxes are not delinquent, sanitation facilities have been approved, and dedicated park and roads have been accepted.

As a prerequisite for filing a final plat, the subdivider may be required to either install the required improvements, or submit an improvements agreement that

STREET DEDICATION

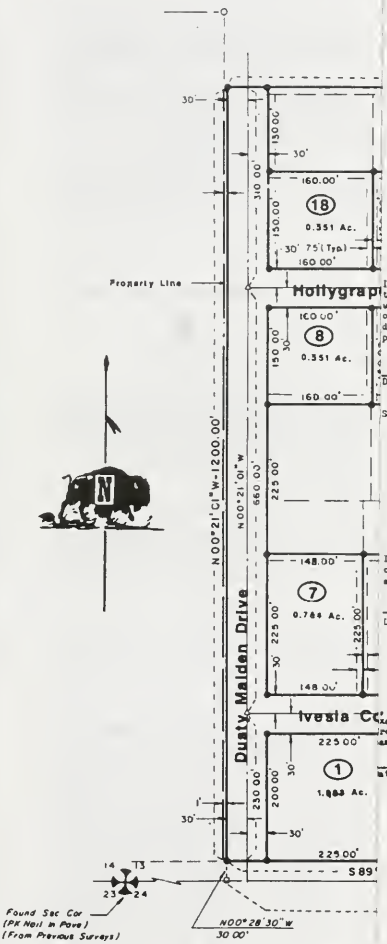
Roads and Streets are to be dedicated to Lewis and Clark County, Monta
constructed to County specifications. Applicant shall petition for, an
County has agreed to create, a maintenance district for the maintenanc
of the subdivision streets.

Lawson M. Lowe, Owner Date Marsha Lowe, Owner

OPEN AREA/PARKLAND DEDICATION

The open area/Parkland is dedicated to the PRICKLY PEAR CREEK ESTAT
ASSOCIATION for perpetual use for parks.

Lawson M. Lowe, Owner Date Marsha Lowe, Owner



Basis of Bearings

The Basis of Bearing is the South line of Section 13, said lin
S89°31'30"W.

CERTIFICATE OF DEDICATION

I, the undersigned property owner, do hereby certify that I have caused to be surveyed, subdivided and platted into lots and streets, as shown on the plat hereto annexed, the following described land in the County of Lewis & Clark, Montana, to wit:

A tract of land in the Southeast Quarter of Section 13, Township 10 North, Range 3 West P.M.M., Lewis & Clark County, Montana; more particularly described as follows:

Beginning at the Southeast Corner of Section 13, T10N, R3W, P.M.M., Lewis and Clark County, Montana; thence S89°31'30"W a distance of 1834.68 feet; thence N00°28'30"W a distance of 30.00 feet to a point on the North Right-of-way line of CANYON FERRY ROAD, THE TRUE POINT OF BEGINNING; thence N00°21'01"W a distance of 1200.00 feet; thence N89°31'30"E a distance of 905.38 feet; thence N00°07'52"W a distance of 118.24 feet; thence N89°31'30"E a distance of 559.40 feet; thence S00°08'46"E a distance of 849.23 feet; thence S89°31'56"W a distance of 559.62 feet; thence S00°07'52"E a distance of 469.10 feet to a point on the North Right-of-way line of CANYON FERRY ROAD; thence along said Right-of-way, S89°31'30"W a distance of 900.79 feet to THE TRUE POINT OF BEGINNING and containing in all 35.786 acres, including all unrecorded and recorded easements and Right-of-ways.

To be known and designated as PRICKLY PEAR CREEK ESTATES RESIDENTIAL PHASE I SUBDIVISION, Lewis and Clark County, Montana and the land included in all Streets shown on said plat, hereto annexed, are hereby granted, donated and dedicated to the use of the public forever.

Dated this_____day of_____, 19__.

Lawson M. Lowe, Owner Marsha Lowe, Owner

Subscribed and sworn to before me this_____day of_____,19__.

Notary Public for the State of Montana
Residing at_____
My commission expires_____

CERTIFICATE OF SURVEYOR

I, the undersigned Registered Land Surveyor, Montana License No. 7333-S, do hereby certify that the Survey and Platting of PRICKLY PEAR CREEK ESTATES RESIDENTIAL PHASE I SUBDIVISION was accomplished under my supervision as is shown on the plat and as shown in the Certificate of Dedication, and that same was made in accordance with the Provisions of the Montana Subdivision and Platting Act (Title 76 - Chapter 3 - Annoteted Code) and the regulations adopted pursuant thereto.

Date Bruce A. Weds, R.L.S.
License No. 7333-S

Subscribed and sworn to before me this_____day of _____. 19___.

Notary Public for the State of Montana
Residing at_____
My commission expires_____

CERTIFICATE OF COUNTY PLANNING

I, the undersigned, director of the Lewis and Clark County Area Planning Office, do hereby certify that the plat of PRICKLY PEAR CREEK ESTATES RESIDENTIAL PHASE I SUBDIVISION, Lewis and Clark County, Montana has been submitted for examination and has been reviewed.

Date Director, Lewis and Clark County
Area Planning Office

CERTIFICATE OF COUNTY TREASURER

I, the County Treasurer of Lewis and Clark County, Montana, do hereby certify that I have examined the records covering the area included in the accompanying plat of Prickly Pear Creek Estates Residential Phase I Subdivision, Lewis and Clark County, and find the taxes on same have been paid for the past five years.

Date County Treasurer, Lewis and Clark County

FINAL PLAT OF

PRICKLY PEAR CREEK ESTATE

Residential Phase I Subdivision

(Lots 1-18)

LEWIS & CLARK COUNTY, MONTANA

STREET DEDICATION

Roads and Streets are to be dedicated to Lewis and Clark County, Montana and are to be constructed to County specifications. Applicant shall petition for, and Lewis and Clark County has agreed to create, a maintenance district for the maintenance and repairs of the subdivision streets.

Lawson H. Lowe, Owner _____ Date _____ Marsha Lowe, Owner _____ Date _____

NOTATION OF COVENANTS

I, the County Clerk and Recorder of Lewis and Clark County, Montana, do hereby certify that all applicable covenants running with the land encompassed in the plat of Prickly Pear Creek Estates Residential Phase 1 Subdivision, Lewis and Clark County, Montana, have been recorded by me in Book Number_____ and page number_____of the Records of Lewis and Clark County, Montana.

Date _____ County Clerk and Recorder Lewis and Clark County, Montana

CERTIFICATE OF COUNTY COMMISSIONERS

State of Montana
County of Lewis and Clark

The County Commission of Lewis and Clark County, Montana, does hereby certify that it has examined this subdivision plat and having found the same to comform to law, approves same and hereby accepts the dedication to public use of any and all lands shown on this plat as being dedicated to such use, this_____day of_____, 19__.

Commissioner _____ Commissioner _____ Commissioner _____

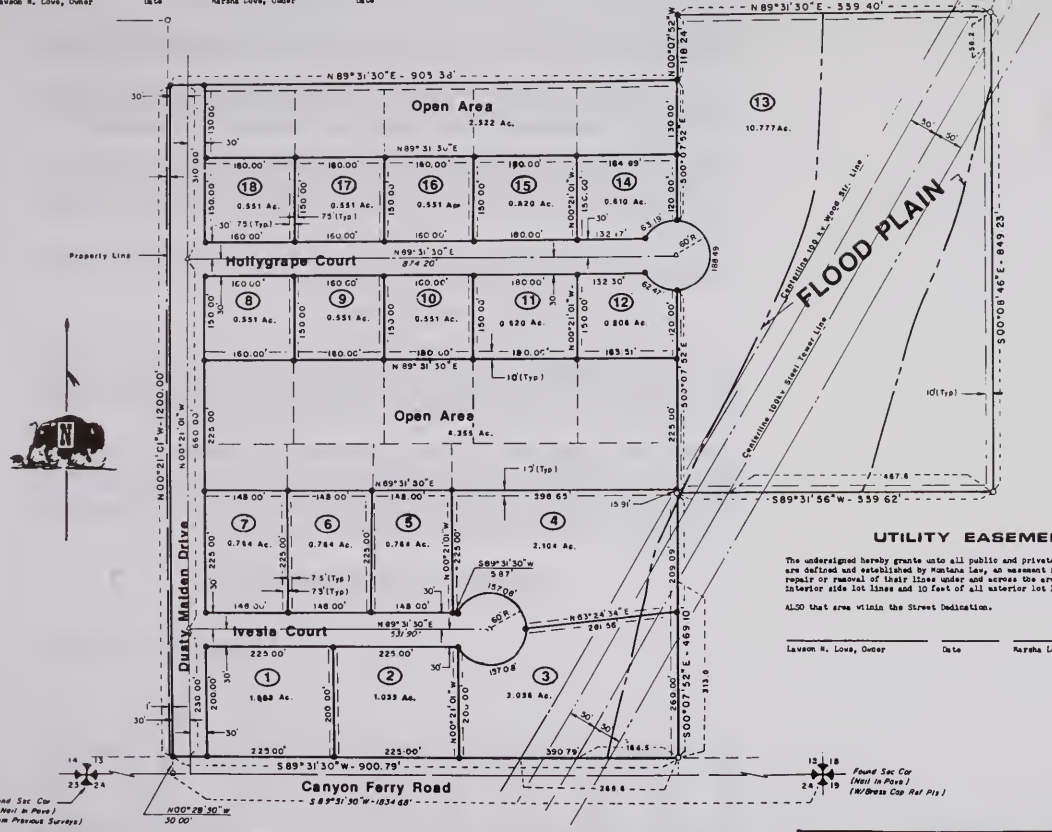
Attest: _____ Clerk and Recorder

County Attorney

OPEN AREA/PARKLAND DEDICATION

The open area/Parkland is dedicated to the PRICKLY PEAR CREEK ESTATES HOMEOWNERS ASSOCIATION for perpetual use for parks.

Lawson H. Lowe, Owner _____ Date _____ Marsha Lowe, Owner _____ Date _____



DRAINFIELD EASEMENT

Open area as shown on the plat are reserved for drainfield construction by each adjoining lot of site less than one acre. Refer to Section 12 of Covenants for specific details.

Area Summary	
Lot Area	25.049 Acres
Open Area	6.877 Acres
Street Area	3.870 Acres
Smallest Lot	0.551 Acres
Largest Lot	10.777 Acres

UTILITY EASEMENTS

The undersigned hereby grants unto all public and private utility companies and cable television, as such are defined and established by Montana Law, an easement for construction, maintenance, repair or removal of their lines under and across the area 7.5 feet either side of all interior side lot lines and 10 feet of all exterior lot lines as shown on the plat.

ALSO that area within the Street Dedication.

Lawson H. Lowe, Owner _____ Date _____ Marsha Lowe, Owner _____ Date _____

Basis of Bearings

The Basis of Bearing is the South line of Section 13, said line having a bearing of S89°31'30"W.

NOTICE

Wells Wells in the area of this subdivision may be subject to contamination from petroleum products in the groundwater. Potential purchasers of property described hereon should consult with the Water Quality Bureau of the Montana State Department of Health and Environmental Sciences and refer to the Certificate of Subdivision plat approval for this subdivision and should refer to the restrictive covenants for further information regarding this potential problem and measures which might provide protection.

Floodplain Portions of Lots 3,4 and 13 are located within the Floodplain.

P.M. MONTANA

1/4	SEC	T.	R.
	13	10N	3W

CERTIFICATE OF DEDICATION

I, the undersigned property owner, do hereby certify that I have caused to be surveyed, subdivided and platted into lots and streets, as shown on the plat hereto annexed, the following described land in the County of Lewis & Clark, Montana, to wit:

A tract of land in the Southeast Quarter of Section 13, Township 10 North, Range 3 West P.M.M., Lewis & Clark County, Montana; more particularly described as follows:

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To be known and designated as PRICKLY PEAR CREEK ESTATES RESIDENTIAL PHASE I SUBDIVISION, Lewis and Clark County, Montana and the land included in all Streets shown on said plat, hereto annexed, are hereby granted, donated and dedicated to the use of the public forever.

Dated this_____day of_____, 19__.

Lawson H. Lowe, Owner _____ Marsha Lowe, Owner _____

Subscribed and sworn to before me this_____day of_____19__.

Notary Public for the State of Montana
Residing at_____
My commission expires_____

CERTIFICATE OF SURVEYOR

I, the undersigned Registered Land Surveyor, Montana License No. 7333-S, do hereby certify that the Survey and Platting of PRICKLY PEAR CREEK ESTATES RESIDENTIAL PHASE I SUBDIVISION was accomplished under my supervision as is shown on the plat and as shown in the Certificate of Dedication, and that same was made in accordance with the Provisions of the Montana Subdivision and Platting Act (Title 76 - Chapter 3 - Annotated Code) and the regulations adopted pursuant thereto.

Date _____ Bruce A. Wade, M.L.S. License No. 7333-S

Subscribed and sworn to before me this_____day of _____. 19__.

Notary Public for the State of Montana
Residing at_____
My commission expires_____

CERTIFICATE OF COUNTY PLANNING

I, the undersigned, director of the Lewis and Clark County Area Planning Office, do hereby certify that the plat of PRICKLY PEAR CREEK ESTATES RESIDENTIAL PHASE I SUBDIVISION, Lewis and Clark County, Montana has been submitted for examination and has been reviewed.

Date _____ Director, Lewis and Clark County Area Planning Office

CERTIFICATE OF COUNTY TREASURER

I, the County Treasurer of Lewis and Clark County, Montana, do hereby certify that I have examined the records covering the area included in the accompanying plat of Prickly Pear Creek Estates Residential Phase 1 Subdivision, Lewis and Clark County, and find the taxes on same have been paid for the past five years.

Date _____ County Treasurer, Lewis and Clark County

FINAL PLAT OF

PRICKLY PEAR CREEK ESTATE

Residential Phase I Subdivision

(Lots 1-18)

LEWIS & CLARK COUNTY, MONTANA

commits the subdivider to install the improvements by a certain date. The purpose of this requirement is to assure that the necessary improvements are installed. The governing body can relieve the subdivider of heavy "front end" costs by allowing incremental installation of some or all of the improvements, yet assure that installation of the improvements will not become a burden on the public.

To protect the public interest, the governing body usually requires a financial security to back the improvements agreement to guarantee that the improvements actually are installed. Usually, financial securities are letters of credit or performance bonds issued by a bank or other financial institution.

Before approving a final plat, the governing body has the option of having the plat examined by an examining land surveyor (who must be a registered land surveyor).

The purpose of the review of the final plat by an examining land surveyor is to find and correct errors in drafting or calculations. The governing body also may have the abstract or certificate of title reviewed by the county or city attorney.

After the governing body approves the final plat, the plat should be submitted to the county clerk and recorder for filing. The clerk examines the plat and accompanying documents to ensure that all certifications and approvals are in proper order.

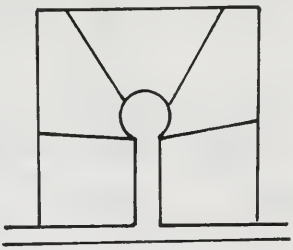
When the final plat is filed, the lots shown become new parcels on the public record and may be sold by reference to the plat.

D. MINOR OR SUMMARY SUBDIVISIONS

Under the MSPA, subdivisions qualifying as "minor" subdivisions must be reviewed under different procedures. Subdivisions qualify as minor subdivisions if they have five or fewer lots, there is proper access to all lots, and the proposed subdivision has received approval from the Department of Environmental Quality.

The first minor subdivision from a tract of record must be approved, conditionally approved or disapproved by the governing body within 35 days from the date the application for plat approval was accepted for submittal. The requirements for a hearing and an environmental assessment are waived for the <u>first</u> minor subdivision of a tract and cannot be imposed by the governing body.

EXAMPLES OF MINOR SUBDIVISIONS



The irrevocable waiver of a public hearing and an environmental assessment, and the requirement that the governing body must act within 35 days, apply only to the first minor subdivision from a tract of record. A second or subsequent minor subdivision may be reviewed under additional procedures. For example, for second and subsequent minor subdivisions, a local government may require that all or part of the environmental assessment be prepared, or that a hearing be held.

The approval of a minor subdivision is based on the same considerations that apply to a major subdivision: compliance with the design standards of the local regulations; the primary criteria have been considered; and compliance with the comprehensive plan, if adopted.

As a result of 1993 amendments to the MSPA, many land divisions that formerly were exempt from local subdivision review now must be reviewed by the local governing body. Subdivisions that create only one or two parcels often will have fewer impacts than higher density development. Therefore, the review process for these "low impact" subdivisions can be conducted more quickly, and in many situations the design standards can be less stringent than for larger subdivisions. These subdivisions can appropriately be reviewed under expeditious procedures, but should meet the design standards governing all other subdivisions. (See the Department of Commerce Advisory Model Subdivision Regulations for specific suggestions.)

"Low impact" subdivisions are those subdivisions where:

a. Only one or two additional lots would be created;
b. The proposed subdivision is the first division of land from a tract of record;
c. The occasional sale, family conveyance, mortgage release, court order, or acreage exemptions have not been previously used to create the subject property or adjacent parcels; and
d. The proposed subdivision is not located on land:
   1) unsuitable for development, as defined by local subdivision regulations,
   2) subject to natural or man-made hazards, or
   3) where significant adverse effects on wildlife, the natural environment or public health or safety would occur.

Subdivisions of one or two lots that do not meet all of those criteria would be reviewed under the regular procedures for minor subdivisions.

In many cases, the review of "low impact" subdivisions can be expedited. However, 76-1-107, MCA requires that planning boards review all subdivisions in jurisdictions where a comprehensive plan and subdivision regulations have been adopted. Where a governing body holds regular meetings more often than once per month, expeditious review and approval is possible.

The intent of the procedures for "low impact" subdivisions is to expedite the review of subdivisions that have minimal impact. However, even a one- or two-lot subdivision could be proposed under circumstances that would warrant a more extensive review. For example, a subdivision might be proposed in an area that could affect a wetland or critical wildlife area, and the subdivision administrator may want time to consult appropriate agencies or technical persons for comment. In another situation, a number of small subdivisions might have been created in a vicinity, and the local officials want time to assess the cumulative impacts. The fourth criterion defining "low impact" subdivisions is a "safety valve" for local officials to allow them more time for review in unusual situations.

E. PROVISIONS FOR SPECIAL TYPES OF SUBDIVISIONS

1. Condominiums/ Townhouses

Condominiums, under the MSPA, are "subdivisions" and must be reviewed and approved by the local governing body. The DEQ is required to approve the sanitation facilities under the MSIS.

The term "condominium" refers to a form of ownership in which the purchaser of a unit has an unrestricted right of ownership of a unit in a multiple unit project, but the land and other parts of the development are held in common ownership with the owners of the other units. This can apply to a single building or to a land development that includes a number of residential buildings.

Condominiums are subject to the Montana Unit Ownership Act, which governs the operation and administration of the projects, including the sale or lease of units, formation of property owners' associations, and maintenance of the common property and facilities. (See 70-23-101 MCA)

Townhouses, on the other hand, are a form of multiple-family dwellings in which the owner of each dwelling unit may hold separate title to the land underneath the unit in addition to jointly owning the common area(s) and facilities of the development.

TOWNHOUSES.

2. Mobile/Manufactured Home and Recreational Vehicle Parks

Mobile/manufactured home parks and recreational vehicle parks require local government approval under the MSPA and sanitation approval under the MSIS. The local approval process is the same as that for typical land subdivisions, except that different design standards are used, and no final plat is necessary because no land is sold. Instead, a final plan, rather than a final plat, of the development is submitted and approved. Local regulations usually contain special design standards that reflect use of smaller lots, a greater need for fire prevention measures, and the need to readily move mobile homes or recreational vehicles in and out of lots.

3. Land Subdivisions by Rent or Lease

Where parcels are proposed to be rented or leased for non- agricultural use, both local government and sanitation approvals are necessary. The process is the same as that for land subdivisions where lots will be sold. A preliminary plat must be approved, and major subdivisions are subject to a hearing and environmental assessment. Park land or cash-in-lieu donation must be made. But, as with mobile/manufactured home parks, no land will be sold so a final plat need not be filed. Instead, a final plan showing the final layout, roads, parkland and other improvements is submitted for approval.

4. Commercial and Industrial Subdivisions

The procedures for reviewing and approving subdivisions for commercial or industrial uses are virtually the same as for residential developments. A preliminary plat must be submitted and approved; and where parcels will be sold, a field survey must be conducted and an approved final plat filed.

However, for non-residential subdivisions no park land is required. The rationale for requiring park and playground dedication in residential subdivisions is that the residents of the subdivision create a need for parks and playgrounds.

Most of the design standards for residential subdivisions apply to commercial and industrial subdivisions, but consideration should be given to the fact that trucks and larger equipment may be using the roads and will need wider roads, wider approaches onto public roadways, access for service trucks, adequate room for off-street parking, loading ramps, and areas that allow maneuvering of service trucks.

5. Planned Unit Developments

The planned unit development (PUD) is a development concept in which the developer has flexibility to use innovation and creativity in the design and layout of a project. Typically, the development provides larger amounts of open space and greater use of common space and facilities. Smaller individual lots, clustering, and narrower roads are often used to focus on open space as one of the attractive features of a PUD.

PUD's often place emphasis on planning, designing and constructing roads and other improvements in relation to topography and other natural features, and on promoting the public convenience and safety.

Local subdivision regulations can allow flexibility in certain standards, permitting the subdivider creativity in design to promote economies in services, enhance open

space and clustering, and protect unique natural features. The design standards commonly permitted to be modified for PUD's address roads, lots, blocks, and the park requirement.

PLANNED UNIT DEVELOPMENTS typically emphasize clustered housing, large amounts of park and open space, and greater use of common areas and facilities.

VI. RELATIONSHIP OF SUBDIVISION REGULATIONS TO OTHER LAND USE POLICIES AND REGULATIONS

Subdivision regulation represents only one piece of an overall community development strategy. Perhaps the most important aspect of a community development strategy is the comprehensive plan. The comprehensive plan might be thought of as a community's vision of how and where future development should occur. Because a comprehensive plan has no regulatory authority, communities use a variety of tools to implement it. Subdivision regulation is one means of implementation, but bringing the community's vision to fruition will require the coordination of subdivision regulations with zoning, capital improvements programming, and any other special plans, policies, or regulations adopted by the community.

Good planning involves a public vision, in the form of a comprehensive plan, and a coordinated effort in implementing that vision. The results of these efforts is a prosperous community with a high quality of life.

This chapter summarizes how subdivision regulations can work in conjunction with other implementation tools in realizing a community's vision.

A. LOCAL SUBDIVISION REGULATIONS AND ....

1. The Comprehensive Plan

Subdivision review is only one of the normal functions of local planning boards. Subdivision regulations work most effectively when used to implement the land use goals and objectives of a local government, usually set forth in a comprehensive plan. As a matter of fact, provisions in both the MSPA and the Planning Enabling Act (76-1-101 et seq., MCA) recognize the importance of regulating subdivisions in the context of longer range land use planning.

In the absence of a comprehensive plan, subdivision regulations are more effective in influencing the internal design and function of a proposed subdivision than in regulating the location or type of development.

Weighing and evaluating the primary criteria for subdivision review required by Montana law is easier in the context of a comprehensive plan because the physical and ecological limitations of the land and resources are known, and social, economic and fiscal effects of development can be readily identified. Local government, in addressing such considerations, must evaluate the location of the subdivision and its characteristics in addition to its internal features.

Subdivision regulations should not be considered a substitute for sound, thoughtful planning. Subdivision regulations are a means through which local officials react to a subdivision proposal. A comprehensive plan sets forth policies and guidelines in advance that help shape the growth pattern of the community and improve the future development.

Where a comprehensive plan has been adopted for a local jurisdiction, the staff planner, planning board and governing body should consult the plan when reviewing each new subdivision proposal. Consulting the plan should help assure that the subdivision will be coordinated with other development and local government plans for roads, parks, recreation facilities, water and sewer systems, solid waste disposal, weed control, and other public services in the area.

Even if the local government does not use the comprehensive plan as a basis for approving or disapproving a subdivision, the plan will help all local officials better understand how the subdivision would affect their operations and provision of service, and allows them to develop better plans, budgets and overall increased effectiveness in serving local citizens.

The comprehensive plan can be used to direct development towards areas within the local jurisdiction that are most suitable for growth and development because of natural features or efficient provision of services. Jurisdictions with such a comprehensive plan can incorporate a combination of subdivision regulations, capital facilities programs, zoning, and other implementation tools to influence future development and its costs and impacts.

Subdividers can find the comprehensive plan beneficial in locating and designing a subdivision. Before investing a large sum of money in purchasing or developing property, a prospective subdivider can assess whether the area is suitable (and acceptable) for development as building sites. He or she can more easily determine where areas are unsuitable for development because of adverse physical features (high ground water, flood hazard, steep slopes) or existing and anticipated lack of public and utility services.

A subdivider can realize practical benefits from a comprehensive plan both by understanding that subdivisions can be required to conform to a comprehensive plan and by taking advantage of a provision in the MSPA that allows the planning board to waive preparation of all or part of the environmental assessment in a jurisdiction that has adopted a comprehensive plan. This provision has been included in the MSPA because it is not reasonable for a subdivider to gather information that already exists in a comprehensive plan and is sufficient for proper public review.

2. Zoning and Development Permit Regulations

A majority of Montana municipalities enforce traditional zoning, which divides a jurisdiction into use zones and allows or prohibits certain land uses in each zone. Montana cities and towns have zoning authority under the Municipal Zoning Enabling Act. One important feature of zoning is that it regulates location of certain uses. Thus, a proposed subdivision within a municipality with zoning should be examined to ensure that it would conform to zoning requirements. Therefore, subdivision regulations should contain a provision that proposed subdivisions must conform to adopted zoning regulations, assuring that lot design, parking and other design features of a subdivision will meet the zoning provisions. Zoning regulations normally set requirements for lots and lot improvements that should be considered in subdivision approval, such as lot frontage, lot size, and off street parking.

Traditionally, subdivision regulations have controlled the internal design, improvements and platting of land developments into building sites, while zoning has regulated the location, density, and character of buildings and structures on lots. Thus, between the two types of regulations, the platting and improvement of building sites and the character and location of buildings and structures on those sites have been addressed by local government.

Several counties have adopted development permit systems, a form of land use regulation that sets out on a county-wide basis certain standards that new developments must meet. Two statutes grant counties the authority to adopt zoning or development permit regulations: the County Zoning Enabling Act and the County Planning and Zoning Commission Statute.

Permit systems differ from traditional zoning in that the jurisdiction is not divided into use zones. The systems are much like subdivision regulations in that developments are not prohibited from certain zones, but wherever they are located they must meet the standards set forth in the permit regulations. Permit regulations emphasize quality of development rather than the location and type of development. Coordination between subdivision regulations and development permit regulations is important.

3. Annexation

Subdivisions adjacent to, or near, municipal boundaries often create difficulties in the approval process when the development is intended, or likely, to be annexed into the city.

Because the subdivision is in the unincorporated area, subdividers naturally apply to the county commissioners for subdivision approval. With anticipated annexation, the difficulty comes because the design, layout, location and construction of streets, water and sewer systems, fire hydrants and facilities, and storm drainage facilities all should be compatible with those of the municipality. Unless the county commissioners work cooperatively with the municipal officials, the subdivision may be poorly designed for orderly annexation into the city. The provision in MSPA that requires county commissioners to give municipal officials an opportunity to review and comment on a proposed subdivision near the city boundaries helps encourage coordination.

A second complexity occurs when the county may take cash in lieu of park land. That money goes into the county park fund, although the subdivision will soon be part of the municipality's responsibility for providing services, including parks and recreation. Funds received as cash in lieu of park land must be used to develop or maintain parks within a reasonably close distance of the subdivision.

A third problem can occur when a subdivision is to be annexed immediately. The subdivider can be subjected to a number of public hearings for subdivision approval and annexation approval. Here again, coordination between the two processes can reduce much of the duplication and other difficulties.

4. Capital Improvements Plan (CIP)

A number of benefits can occur where a local government has adopted a capital improvements plan (a CIP sets forth a schedule, costs, and funding sources for needed improvements or major repairs to a local government's public facilities).

First, the local government has set down a schedule for systematically expanding or extending its public facilities and systems. The local officials know at the time of subdivision approval whether those services will be available to serve the subdivision and when they are expected to be extended. The subdivider may have to bear the costs of off-site improvements in order to extend public services to the subdivision where it would be completed prior to the scheduled extension of services by the local government or where no extension has been planned.

In some instances, local officials may have identified certain areas that are not suitable for development, and they do not expect to provide public services to those areas. Through their planning, local officials may have found that sufficient areas exist that are more suitable or more beneficial for development and may disapprove a subdivision in unsuitable areas.

The subdivider benefits from a CIP by knowing the areas within the local jurisdiction where services exist, extensions are planned, and where no extensions can be expected. A CIP also offers a practical advantage for subdividers should be emphasized. The MSPA provides that in jurisdictions where a comprehensive plan, zoning regulations and capital improvements plan all have been adopted, subdivisions are deemed to be in the public interest, and no environmental assessment is required.

All of these opportunities for coordination, sharing costs, or avoiding unnecessary costs exist where a CIP has been thoughtfully prepared and adopted by a local government.

As new subdivisions are approved, unexpected needs for new or expanded public facilities may occur, and the CIP may need updating sooner than planned. While the CIP helps local officials plan and budget the costs of needed facilities extensions to serve new subdivisions, those subdivisions may create a need for re-assessment of facilities needs. The Montana Department of Commerce Community Technical Assistance Program publishes two booklets to assist local governments with preparing CIP's.

5. Building Codes

Building codes establish standards for design and construction of buildings in order to promote public health and safety. The building codes specify the allowable materials and construction methods to be used in any new building. Montana local governments, upon certification by the state, may enforce the Montana Uniform Building Code. Many local governments have not adopted a building permit system, and in those jurisdictions the state enforces the Uniform Building Code for public, commercial, and multiple-family residential buildings with more than four dwelling units.

Unlike subdivision regulations which regulate the creation of building sites, building codes are applied after the lot has been divided, improved and the building is being constructed. Building codes are enforced by issuing building permits and conducting inspections.

Building permits are not intended to be used in place of zoning regulations to achieve some of the objectives of zoning. Some cities occasionally use building permits as a means to deny mobile homes, apartments, or other types of buildings or uses in certain areas of town. These types of regulations should be enforced under a properly adopted zoning ordinance, not through a municipal building code.

Under a Montana State Supreme Court decision, a local government may refuse to issue a building permit where the proposed structure would not conform with an adopted comprehensive plan. As a result of this decision, local governments with adopted comprehensive plans can implement the plan through use of their building permit system.

6. Local On-Site Sewage Treatment Regulations

Many Montana counties have adopted local on-site sewage treatment regulations, which authorize the county sanitarian to inspect the design and installation of septic tanks and drain fields. Without the issuance of permits and site inspections, counties have little means of enforcing the conditions and standards imposed by the DEQ in subdivision approval under the MSIS.

SUMMARY CAPITAL IMPROVEMENTS PLAN

Project	Priority	Cost ($000)	1994	1995	1996	1997	1998	Funding Source
Sewer Treatment	1	250	250					Rev. Bond; EPA
Water Treatment	2	125	125					FmHA; Bond Rev. Bond
Rest Home	3	200						
-1st Phase				120				
-Addition						80		G.O. Bond
CBD Water Main	4	50		50				Rev. Bond
So. Side Sewer	5	5			5			SID
So. Side Paving	6	100			100			SID
So. Side Storm	7	234			234			G.O. Bond
Senior Center	8	75				75		G.O. Bond
Hospital	9	50				50		G.O. Bond
1st Ave Resurface	10	36					36	SID
Reseal Runway	11	40					40	FFA;Bond

This sample capital improvements plan (CIP) sets priorities, identifies costs and sources of funding and establishes a schedule of construction for needed public improvements. In this example, a number of capital improvements are addressed that may not directly affect an individual subdivision, which is typical in a Montana community. The capital improvements plan will help local government officials understand how a proposed subdivision will affect the provision of public services. In addition, it will help the prospective subdivider to know where and when public facilities will be available.

In other instances, local officials may negotiate with the subdivider to pay for extending the public services under an agreement that as other developments occur in the area, the local government will arrange a pay-back for part of the cost of the extensions.

The local regulations can be an important aid in enforcing subdivision regulations because the county sanitarian is often alerted to new land divisions as a result of enforcing septic tank regulations. Planners and planning boards also may be alerted to new land divisions by keeping in contact with the county sanitarian.

7. Floodplain Regulations

Floodplain regulations usually complement subdivision regulations by identifying flood hazard areas. The governing body should require the subdivider to delineate

flood hazard areas on the face of the plat. The Floodplain and Floodway Management Act authorizes adoption of floodplain regulations on streams where the 100 year floodplain and floodway have been officially designated by the Department of Natural Resources and Conservation. Local governments also may adopt floodplain regulations under Montana's zoning enabling statutes. Most floodplain regulations allow development under certain conditions in the flood fringe, which is the area outside of the floodway. The floodway is defined as that portion of a floodplain that carries moving water during a flood.

The Department of Commerce Advisory Model Subdivision Regulations and most local subdivision regulations require a subdivider proposing a development within 2000 horizontal feet and 20 vertical feet of a live stream that drains 25 square miles or more to supply flood data for that stream.

Under their subdivision regulations, most local governments in Montana are authorized to deny subdivisions in any locations they identify as prone to flooding. Because they grant local officials increased discretion in defining flood hazard areas, subdivision regulations can be more effective than floodplain regulations.

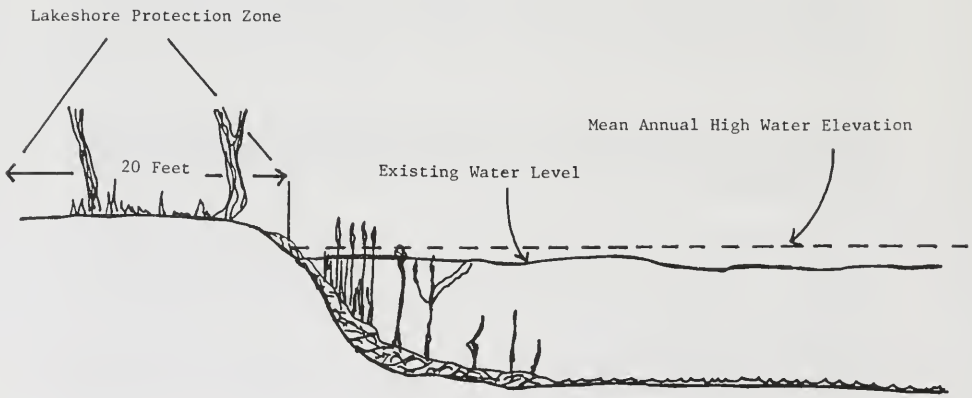
8. Lakeshore Regulations

State law authorizes local government to adopt lakeshore regulations to protect the shores and banks of natural lakes and manmade reservoirs. Lakeshore regulations govern any construction or shoreline alteration within the lakeshore protection zone. That zone is the land within 20 horizontal feet of the mean annual high water elevation of the lake (the average height of the highest level of the lake over the past five years) [see diagram below].

In counties that have adopted lakeshore regulations, subdivision review can assist in enforcement of those regulations by assuring that lot configurations and subdivision improvements complement the requirements for lakeshore protection.

Lakeshore regulations also could be adopted under zoning enabling statutes.

DIAGRAM OF LAKESHORE PROTECTION ZONE



B. MONTANA SUBDIVISION AND PLATTING ACT (MSPA); MONTANA SANITATION IN SUBDIVISIONS ACT (MSIS)

The MSPA and the MSIS statutes operate under similar definitions of what constitutes a "subdivision", with two significant exceptions. First, the MSPA allows some exemptions from review that are not exempted under the MSIS -- the family transfer and the relocation of a common boundary line.

Second, under the MSPA only parcels created for sale, rent, or lease are subject to review, whereas under the MSIS all parcels less than 20 acres in size resulting from the division must be reviewed. The MSPA apparently allows parcels remaining after a parcel has been created through use of an exemption to be created without local review if they are not created for the purpose of sale, rent or lease.[1] Under the MSIS, remainder parcels clearly are subject to DEQ review whether or not they are intended for conveyance.

Thus, the MSIS has a much more comprehensive authority than the MSPA to bring a greater range of parcels under review. The MSIS and administrative rules adopted by DEQ specify the situations that are exempt from sanitation review, but generally those parcels of less than 20 acres that will not require water or sewer facilities are exempt.

Divisions of land subject to local subdivision review under the MSPA are filed as subdivision plats. Divisions exempt from local subdivision review are filed as certificates of survey (except for relocation or aggregation of five or fewer lots in a platted subdivision, which are filed as amended plats). Thus, under the MSIS, the DEQ and county sanitarians or health officials review and approve sanitation facilities for parcels shown both on subdivision plats and certificates of survey.

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[1] *A 1981 Montana Fifth District Court decision in Beaverhead County requires all parcels intended for sale in Beaverhead County to either have an eligible exemption or be reviewed as subdivision lots. That decision made a point of the fact that the MSPA does not provide an exemption for "remainder" parcels.*

REQUIRED REVIEW FOR VARIOUS TYPES OF LAND DIVISIONS

Type of Division of Land:	MSPA	MSIS
Land subdivisions for sale, rent or lease	Yes[1]	Yes[2]
Mobile/manufactured homes, recreation vehicle parks	Yes	Yes
Condominiums	No[3]	No
Subdivisions in master planned areas or Class 1 and 2 municipalities with no water/sewer extension	Yes	No
Utility sitings, parking lots, parks, gravel pits, ski lifts with no water or sewer	Yes	No
Relocation of common boundary, building requiring water or sewer	No	Yes[4]
Redesign, aggregation of 5 or fewer platted lots (no MSIS review if connected to public water and sewer)	No	Yes[4]
Family transfer	No	Yes
Court orders; operation of law	No	No
Laws of Eminent Domain (condemnation)	No	No
Security for construction mortgage, lien	No	No
Sever interest in oil, gas minerals, water	No	No
Cemetery lots	No	No
Reservation of life estate	No	No
Rent or lease for agricultural purposes	No	No
Sale for agricultural purpose with covenant	No	No
Land acquired for state highway	No	No

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[1] *Less than 160 acres*

[2] *Less than 20 acres*

[3] *Condominium buildings proposed on lots approved for condominiums are exempt under both MSPA and MSIS*

[4] *Specific exemptions under MSIS and DEQ administrative rules have the effect of exempting virtually all divisions involving relocation of a common boundary where no water or sewer will be provided.*

VII. ROLES AND RESPONSIBILITIES

A number of different public offices are involved in the review, approval and filing of a subdivision plat. For example, subdivision reviewing agencies such as the Montana Department of Fish, Wildlife and Parks; fire districts; irrigation districts; property owners associations; citizens; adjacent property owners; and, of course, the subdivider have roles in the process. The review process functions most effectively when everyone involved understands the responsibilities of the other parties and participates in the process with a willingness to cooperate. The governing body can promote coordination among affected parties, especially local officials, by adopting functional review procedures. The following outlines the basic roles and responsibilities of the various parties involved in subdivision review.

A. GOVERNING BODY

The governing body of a local unit of government is the most important public entity in the subdivision review process because the final decisions for approval or denial are made by that body. Many other offices and personnel make recommendations, but the final decision rests with county commissioners for subdivisions in the unincorporated area, and city councils (or commissions) for subdivisions within city boundaries.

Not only does the governing body approve or disapprove a preliminary plat of a proposed subdivision, but it must make important decisions regarding conditions for approval, improvements the subdivider must install, improvement guarantees, and the location of parkland. The governing body approves the final plat when the subdivider has met all conditions and requirements, and the plat and all of the required documents and certifications have been obtained and submitted in the proper form.

The governing body often finds itself caught in the middle of disagreements over approval of a subdivision. The subdivider, on the one hand, will advocate approval of the subdivision while neighboring property owners and other members of the public frequently will oppose the project. Despite the fact that staff planners and the planning board make recommendations, it is the elected officials who must make the final decision, trying to take the action that will best serve the public interest.

B. COUNTY CLERK AND RECORDER

The office of the county clerk and recorder also is crucial because of certain decisions that must be made by that office. The clerk and recorder must review all land records, including subdivision plats, to determine whether they are eligible for filing and are in proper form.

The clerk and recorder is responsible for determining whether a certificate of survey submitted for filing may be filed or, if under state and local requirements, the land division must be reviewed as a subdivision. Because of the multitude of statutes, administrative rules, legal opinions and local regulations, making that determination can be very complex and difficult.

In addition to plats and certificates of survey, the clerk and recorder must receive and file the statements of sanitation approval issued by the Montana Department of Environmental Quality.

C. PLANNING BOARD

Planning boards usually serve as the review agency for the governing body. Planning boards, with professional staff, carry out the detailed examination of the preliminary plat, the environmental assessment and other information required for review. Typically, the planning board holds the required public hearing, takes testimony and receives comments from the general public and local, state and federal agencies. Because the governing body usually relies on the recommendation of the planning board, the board has a responsibility to thoroughly evaluate the preliminary plat and related information to make a studied recommendation.

Planning boards that have no professional staff or retained consultants have an even greater burden. Not only do they have the responsibility of reviewing a subdivision, holding a hearing and making a recommendation, but the board members (who by law serve as unpaid citizens) must deal with the details of review, publishing notices, conducting hearings, preparing written findings of fact and performing all the other ministerial functions of preliminary plat review.

As an appointed citizen board, a planning board usually is somewhat removed from the day-to-day politics that face elected officials, and the board has an opportunity to view a subdivision from outside of the political arena. Planning boards can make their recommendations with a focus on the positive and negative impacts a subdivision will have on the overall jurisdiction and the long term effects on the community plans and policies.

D. PLANNING STAFF

In most local jurisdictions the planning staff is responsible for managing the subdivision review process. However, in local jurisdictions that do not have a staff planner, the administrative duties of subdivision review must be handled by other personnel such as the city or county clerk, a planning board member, the sanitarian, the mayor or a county commissioner.

The planner (or subdivision administrator) handles the details of the process -- examining the preliminary plat application for completeness, distributing copies to appropriate agencies and organizations, publishing notice to the public and arranging a public hearing, making on-site inspections, notifying adjacent landowners, reviewing the plat and information for compliance with laws and regulations, checking courthouse and other records, drafting a written finding of facts, and drafting a recommendation for the planning board.

The planning staff is available on a part-time or full-time basis, so the subdivider or his/her surveyor, engineer or planning consultant can contact the planner with questions or comments about a proposed subdivision. The planning staff typically meets with the subdivider in a pre-application conference to discuss the local regulations and the applicable standards.

Where persons might oppose or question the benefit of a proposed subdivision, they usually contact the planning staff to express their opposition or to raise questions. Thus, because of their availability and the fact that they are expected to know the specifics of the regulations and the review procedures, the staff becomes the focal point not only for most of the questions, comments and lobbying, but also for any controversy surrounding a particular proposal.

Often local governments rely on the planning staff to assist the county clerk and recorder in determining whether a land division created by a certificate of survey (an exemption) is in fact eligible for filing as a certificate of survey (that is, without subdivision review).

E. OTHER PUBLIC AGENCIES

School districts, solid waste districts, reservation districts, irrigation districts, fire districts, county road supervisors, park departments, law enforcement agencies, and public works departments are among some of the local government entities that should be given the opportunity to review a subdivision proposal and comment on the effects of the proposal on the provision of services.

Where possible, personnel in each department and district should quantify the need for additional personnel, equipment, space and maintenance, and try to estimate the additional costs created by the subdivision.

Department heads can provide an overall benefit by working with the subdivider to try to find means of minimizing adverse impacts on services and, at the same time, by trying to avoid imposing excessively expensive requirements.

Services are usually more efficiently and effectively provided when the department or district has developed capital improvement or long range plans. Such planning can be an important asset to subdividers because it allows them to coordinate the design of their developments with the provision of services. Also, by participating in the subdivision review process, the heads of departments and service districts can update their plans as subdivisions are approved and developed.

F. PRIVATE UTILITIES

Private companies providing electric, gas and telephone service should also be involved in subdivision review. Those utilities need easements or rights-of-way for utility lines, and the width, location and legality of those rights-of-way can be critical to the effective provision of those services.

Typically, a single company provides each of those services in any one area, and all the affected private utilities are provided a copy of the preliminary plat or ~~is~~ are contacted to examine the application and comment on how the subdivision will affect their provision of services.

As is the case with public agencies and districts, when private utilities work with the subdivider, the service can be provided with a minimal impact on the utility and other customers, and with a minimum of cost to the subdivider.

G. COUNTY ASSESSOR, APPRAISER, TREASURER

The county appraiser and county assessor will be involved in determining the taxable valuation of the property proposed for subdivision, and in preparing tax statements for each lot owner within the development. The appraiser also can help determine the appropriate cash-in-lieu payment for parklands where applicable.

The appraiser may conduct an on-site inspection of the properties to determine the appraised value of the lots and improvements. The assessor determines the amount of property taxes owed to the county, municipality if applicable, the elementary and high school districts, and any other taxing districts such as fire, solid waste, and conservation districts.

The appraiser's and assessor's offices also can provide valuable assistance during the subdivision review process. For example, one of these offices usually maintains a tract map which identifies the current owners of all property located in the county. This information greatly simplifies the task of sending notices concerning a subdivision to the owners of property adjacent to the land proposed for development. In addition, both offices can help the subdivider and the planner or planning board determine what effects the proposed subdivision will have on taxation.

Neither a final plat nor certificate of survey can be filed unless the county treasurer certifies that there are no delinquent taxes on the property.

H. AFFECTED PROPERTY OWNERS AND THE PUBLIC

The MSPA specifically requires that owners and purchasers under contract for deed of property adjacent to a proposed major subdivision be notified by registered or certified mail. Other citizens may be concerned about a development, believing that the subdivision would affect the public resources, services, the general public welfare, or the environment.

Frequently, neighboring property owners oppose proposed subdivisions. In expressing opposition, they should be aware that a landowner has certain property rights, including subdividing. Therefore, opponents should carefully assess their opposition to determine specifically what aspects of the proposed subdivision they oppose. They should weigh the reasons they oppose the subdivision against the property rights of the subdivider.

Opponents will contribute most to thoughtful consideration of a subdivision when they express their concerns in relation to the criteria that the governing body must consider in approving or disapproving a subdivision (See 76-3-608 MCA for the fundamental statutory criteria).

I. THE SUBDIVIDER, ENGINEERS AND SURVEYORS

The subdivider, of course, initiates the subdivision review process by applying for subdivision approval. To facilitate the development process and to minimize difficulties, the subdivider should meet with the subdivision administrator to discuss the local requirements, standards and procedures. The single most important factor in easing the process of subdivision approval is for the subdivider to work cooperatively with the local government.

The subdivider often can avoid conflict and delay by hiring an engineer, surveyor or planning consultant who is familiar with the subdivision review process.

The subdivider also should meet with department heads, supervisors of special districts, representatives of private utilities and others who would be affected by his proposed subdivision. By meeting and working with those entities that provide services, the subdivider usually can find ways to minimize potential problems and the subdivider's own costs.

J. MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY

The Montana Department of Environmental Quality (DEQ) is responsible for the review of the water supply systems, the sewer and sewage treatment and disposal systems, solid waste disposal method, and the storm water runoff management systems. Before it will approve a subdivision, the DEQ must be convinced that (1) the water supply system will not only serve the needs of the proposed subdivision

but will not adversely affect the water supply of the surrounding neighborhood; (2) the sewage treatment and disposal system will operate without causing a health hazard and without degrading surface water or ground water; (3) the solid waste will be disposed of in an approved manner; and (4) storm water will not create a nuisance for property owners, will not interfere with the operation of the water supply or sewage treatment systems, will be channeled in a manner that will not erode roads, approaches, or borrow pits, and will not pollute state waters.

K. LOCAL HEALTH AGENCIES

As noted above, the DEQ generally is responsible for approving sanitation facilities in subdivisions under the MSIS. In many counties, the county sanitarian conducts the review of rural subdivisions containing five or fewer parcels. The sanitarian evaluates the site and information submitted by the subdivider to determine whether the proposed systems for water supply, sewage treatment and disposal, solid waste disposal, and drainage would meet the DEQ standards. The sanitarian sends a recommendation to the Water Quality Bureau of DEQ regarding the adequacy of the proposed sanitation facilities.

Under regulations implemented July 1, 1986, local health agencies that have qualified personnel may elect to assume approval authority for land divisions with five or fewer lots and on-site water and sewer systems, and for subdivisions that will connect to municipal water and sewer systems if no extensions of the systems are required.

In many rural or small counties, the staff planner and the sanitarian are in offices together. Although each has different review responsibilities under two different statutes, working closely with one another helps to make both review processes more effective and can reduce the time of review and unnecessary duplications.

Coordination between the staff planner and the sanitarian is extremely advantageous in handling parcels exempt from local review. Exempt parcels such as "family transfers" must be reviewed by the sanitarian, and the sanitarian's cooperation with the planner helps both the planning office and the county clerk and recorder keep track of certificates of survey and whether a division of land is properly ~~is~~ exempt from subdivision review.

VIII. CONCLUSION

Land divisions and subdivision development greatly influence the physical character of any community or county. For those land divisions, mobile/manufactured home and recreation vehicle parks, and condominiums that are subject to local government subdivision review and approval, the Montana Subdivision and Platting Act sets forth a process that can allow orderly land subdivision and development to proceed in accordance with local goals and policies. But the process, out of necessity, is somewhat involved. It requires the attention and involvement of a number of people in the community and the county.

In most local jurisdictions, the citizen planning board becomes the focus of the review process. The planning board, often with staff or with contracted planning assistance, conducts the "nuts and bolts" review and evaluation of a proposed subdivision, provides for public participation, and makes a recommendation to the governing body.

The elected governing bodies responsible for making the final decisions on a subdivision proposal often find themselves caught among conflicting pressures within the community. The decisions by the governing body on individual subdivisions will have a significant collective result on the type, pattern and quality of land use development within the jurisdiction.

Landowners, subdividers, developers, surveyors, engineers, architects, neighboring property owners, taxpayers and citizens in general can exert various political pressures on the planning board and governing body in efforts to influence the outcome of subdivision decisions.

This Primer is designed to assist all of the parties involved or interested in subdivision development to better understand the Montana Subdivision and Platting Act and to gain an overall perspective of the subdivision review process.

APPENDIX F

COMPREHENSIVE PLANNING OVERVIEW

PLANNING DEFINED

"Planning" is a process or activity used by individuals and groups to manage change. Planning is a series of actions taken by people to understand and assist in the development of their lives. Farmers plan when they decide what and when to plant. Ranchers plan by determining the number of stock, range, and feed for future markets. Businessmen use planning when they think ahead for inventories, investments and profits. In a few words everyone who looks ahead or tries to influence future events for himself is planning. Cities, towns, and counties also need to plan their futures.

The common thread in all planning activities is the concern with future events. We cannot plan for the past. What we can plan for is the future, whether immediate or the long range.

COMPREHENSIVE PLANNING

"Comprehensive Planning" or "Master Planning" are terms often heard or used in the planning field. Comprehensive planning activities are very broad and inclusive efforts. These efforts take into account the effects and interrelations of as many relevant physical, social and economic conditions as possible. "Comprehensive planning" then, is a broader understanding of our past and present and thus, a broader attempt at influencing future social, physical, and economic events to our benefit.

Comprehensive planning tries to relate a variety of concerns into an understandable whole. For illustration, this activity can be simplified into a series of fundamental steps:

1. **Background Research** - gathering and examining background facts of past and present events.
2. **Goals and Objectives; Development of Master Plan** - forming goals and objectives with the citizens and setting these forth in a master plan and other tools for reaching such ends.
3. **Implementation** - taking actions according to plans to accomplish goals and objectives.
4. **Evaluation** - continuous reviewing and revising of the previous steps.

Volumes of literature have been written, and will be written on the comprehensive planning process and its intricacies. Many might consider the first two steps the total of comprehensive planning, all four steps are necessary. Most completed plans are amended and updated based on actual experience. What this implies is that things change, and these changes have to be acknowledged and somehow incorporated into our plans.

Step 1. Background Research - The studies gathered for Background Research form the backbone for action in subsequent steps. Within steps one and two, the community wrestles with ideas of where they are, and where they would like to be in the future.

Step 2. Formation of Goals and Objectives; Development of Master Plan - Where individual and community or county interests are welded together into community goals and objectives. These goals and objectives are then incorporated in the community's plans. Public involvement in setting goals and objectives is essential. Achieving public support requires public involvement. The better people understand their needs and wants in relation to government services, the more they are likely to support the necessary policies and plans they help to produce. Goals and objectives are developed from interaction between the public, community groups, local government representatives, the planning board, and planning staff. The process of establishing community goals and objectives in a public arena is called the "democratic process". Establishing these general intentions serves both the public and private sectors as a guide for development and decision making.

A master plan is the unification of all planning products. (Montana law refers to the plan as the "master plan". The master plan is also sometimes called the "comprehensive plan". These terms can be used interchangeably.) The master plan may be a series of separate plans, a policy document, or all these plans combined into one document. In small communities, there might be a single document called the "master plan" or "comprehensive plan", with sections devoted to each of the subject areas. In larger communities, there may be a master plan and individual plans for each subject.

Step 3: Implementation Tools - are products created complementary to and based upon, the master plan. The tools are used to carry out the goals and objectives of the master plan. This is a crucial step in the comprehensive planning process. It requires a community to take positive action to see that its planning labors are actually put into effect, and make its desires a reality.

Step 4: Evaluation - is the reexamination of the previous steps' experiences. The process and products are changed as necessary. This step suggests an important characteristic of planning: Planning is a continuous, dynamic process.

Comprehensive Planning Products

There is often confusion over the comprehensive planning "process" and its actual "products". Information is summarized and bound together as one or more "studies". A "study" is a product. The process was the effort to produce the study. Planning products are many or few, depending upon the local needs and resources. The number of products are not as important as their quality and comprehensiveness.

The Master Plan (Comprehensive Plan)

A master plan is an official public document adopted and used by a local government as a general guide for development and conservation decisions. It is not a regulation, rather, it is an official statement of public policy guiding growth and change.

Creating a master plan takes time and effort. The comprehensiveness of the process will dictate the time necessary for completing the plan, developing the implementation tools, and implementating the master plan.

STEP 1. BACKGROUND RESEARCH

Overview

This section provides a discussion of the **background research** step in the comprehensive planning process. Background research is generally done as the first step in preparation of a community's master plan. The features of base maps are first presented, followed by information collected in economics, population, land use and land characteristics, transportation, housing, public facilities, and special studies.

Base Map

Before a community proceeds with the comprehensive planning process an adequate base map should be obtained. A base map shows basic information about the community including the full boundaries of the planning area, platted streets, railroads, rivers, lakes, public properties, and street blocks.

The scale of the base map varies with the size of the area to be mapped. (For most small and medium sized communities, a scale of 1 inch equals 100 feet up to 1 inch equals 500 feet, provides a fairly clear view of each lot. For counties, scale ranges of 1 inch equals 200 feet up to 1 inch equals 1000 feet are more appropriate.) It sometimes is advisable to have a large sized map for wall mounting and other maps reduced in size for field work. Some planning agencies keep a base map up to date as changes occur. In others, a new map is periodically prepared.

Good sources for initial maps are the State Highway Department, the Natural Resource Information System of the Montana State Library, local assessor, county surveyor, or sometimes local fire insurance firms (for Sanborn Maps). Maps showing the topographic contours are available from the U.S. Geological Survey, Soil Conservation Service and sometimes local conservation districts. Aerial photographs are sometimes used as a beginning base map and are available from some of these same sources.

Economic Study

The way a community makes its living is the core of economic studies. Local economic studies analyze income and employment in manufacturing, wholesale and retail trades, transportation, agriculture, professional services, government, construction, etc. When properly tabulated, the income and employment of the community will reflect the current economic situation and will form

the basis for forecasting future employment and income trends. These trends will influence decisions about land area needed for new business and residential development.

Employment is often classified as two basic types: "Primary Employment" provides services or the production of goods for persons living outside the local economy. "Secondary or Derivative Employment" provides necessary services, goods and facilities for the residents of the local economy. Analysis usually focuses on the relationship between the two employment types, such as the history of employment of each type and their changing relationship due to industrial and commercial changes, population shifts, etc. As jobs occur in new or expanded primary employment there is usually a corresponding change in secondary employment. Therefore, "trends" and "potentials" for employment are estimated and give some insight into future community needs.

By looking at income and employment, an economic study tries to identify future growth trends and possibilities. Elements such as how fast primary jobs are created or lost in response to export markets figure heavily in local economics. Per capital income is used as a measure of average citizen well-being in comparison with other communities, the state, regional and national information. These comparisons can suggest causes and effects of local economic change.

The economic functions of local communities are important for analysis of trends. Local communities may be classified primarily as retail trade center, manufacturing center, tourist center or other classification. These classifications are useful for determining changes that have occurred, are occurring or might occur when a decline or increase happens in manufacturing or tourism employment and income. In local communities, a change in one economic area generally affects overall community economics.

We must keep in mind that economic plans we develop affect both public and private sectors of local economies. The preservation and expansion of the economic base is usually the prime objective in providing viable communities.

The figures or numbers used in economic analyses have to be kept current and tabulated in usable forms to be of value. They should present a clear, current picture of the local economy.

Sources of economic information are Chambers of Commerce, retail trade associations, local banks, savings institutions, and the State Departments of Labor, Revenue, and Commerce. Universities and colleges are sources of both information and assistance in making economic studies for communities or counties.

Population Study

Population projections are fundamental to comprehensive planning as they are the basis for estimating all other future needs in the community. Population projections help local government officials estimate the type and quality of public facilities and services that will be required for the future. Projections also help businesses conduct market analysis for improvement or new business expansion. Population projections need periodic adjustment and revision if major changes occur in a community over time.

There may be population projections available on an area wide or local basis from state or federal agencies.

Sources of information on population studies and statistics are the U.S. Census Bureau; Montana Department of Commerce Census and Economic Data Center; school districts; the Montana Office of the Superintendent of Public Instruction; and universities. Technical assistance in using the techniques and information may be obtained from these sources or from private consultants and economists.

In addition to the number of people, such characteristics as age, and distribution, ethnic groups and population density are analyzed. In larger communities, such population characteristics are often mapped by using symbols to represent density. Such mapping can aid in visualizing cultural relationships with income, employment, housing or other subjects.

Land Use Study

The land use study is basic to effective land use planning and using such implementation tools as zoning or subdivision regulations. This study analyzes the way in which community lands are being used. Some information is easier to analyze in tables or charts. However, mapping of as much information as possible generally makes the information more understandable. Therefore, most land use studies are composed of maps showing various information, supported by descriptive, analytical documentation.

The purpose of a land use map is to visually show different land use planning areas and to determine logical, future development patterns. A master plan can contain a current land use map, a proposed land use map, or both. The map should show all of the community plus four to twelve miles outside the jurisdiction. The base map provides a suitable beginning for a land use map.

Preparing a land use map requires time and a lot of field work. Land use maps can be prepared by a variety of people: staff planners, consultants, or planning board members. Other available persons helpful in preparing such maps are city draftsmen, city or county engineers, building inspectors, city or county clerks, and high school and college students.

It is very important to establish uniform procedures for gathering and recording land use information. This will yield more accurate maps and information. Care must be taken to ensure that the project is rapidly and uniformly accomplished. The information should be quickly acquired, coded and mapped so to reflect the most up to date situation.

An initial decision must be made on the land use classification system to use in gathering information. This classification system will vary from community to community. To be of maximum benefit, there should be some attempt to coordinate land use classes between adjoining communities and counties. A suggested classification system follows:

SUGGESTED LAND USE CLASSIFICATION SYSTEM

Land use classes for counties and small communities	Map codes	Colors	Land use classes for urbanizing counties and larger communities	Map codes	Colors
Residential	(R)	yellow/orange	Residential: Single family 2-4 family Multi-family Manufactured Homes	 (R-1) (R-2) (R-3) (MH)	 light yellow med yellow dark yellow yellow/orange
Industrial	(I)	grey to black	Industrial: Heavy Manufacturing/Industry Light Manufacturing/Industry Other Manufacturing/Industry	 (I-1) (I-2) (I-0)	 black dark grey light grey
Commercial (or Trade & Service)	(C)	red	Commercial: Wholesale Trade/Business Retail Trade/Business Services/Other Business	 (C-1) (C-2) (S)	 dark red med red light red
Transportation, Communication and Utilities	(TR) (CM) (UT)	use lines use lines	Transportation - Transportation Communication-Communication Utilities - Utilities	(TR) (CM) (UT)	black lines black lines black lines
Cultural, Entertainment, and Recreational	( ) ( ) ( )	light blues, pinks or greens	Cultural - Cultural Entertainment - Entertainment Recreational - Recreational	( ) ( ) ( )	light blue pink light green
Resource Production and Extraction	(AFM)	greens & browns	Resource Production - Agricultural and Extraction - Forestry -Mining/Quarrying	(A) (F) (MQ)	med green dark green brown
Transitional (or Vacant)	(V)	no color	Transitional - Vacant Urban/Built-Up (or Vacant) - Vacant Rural - Other Vacant/Low-Use	(VU) (VR) (VO)	no color no color no color
Water Related	(use name)	blue	Water Related - Major Water Bodies - Major Water Courses - Other Water Bodies/Courses	(name) (name) (name)	dark blue dark blue dark blue

There is nothing sacred about the suggested land use categories. Their intent and purpose are for coding, analyzing, and displaying land use information. They are recommended for their comparability and compatibility with other information sources the local community or county planning process will probably use.

What method to use to obtain information for the land use study must also be decided. One way is to use photo-reduced base maps showing all parcels, lots, streets, and other features. Then assign people to one or another area, and have them traverse the area on foot, or by car. In crossing their areas, they note on their map the land use activities they observe. They also plot the type of

residences (single family, multi-family, etc.), type of business (manufacturing, retail or wholesale trade, general business, gas station, etc.), the open spaces (park playground, vacant lot, agricultural uses, etc.), the utility corridors (telephone lines, known water and sewer corridors, gas and oil pipe lines), the public facilities (library, schools, churches, convention centers, swimming pools, stadium, etc.), and other information.

Another commonly used method is to obtain current aerial photographs of the area, and then mark the land use features and information on the photographs.

The actual classification of land uses involves its own set of problems. Sometimes the name of the activity (grocery store, barber shop) is penciled directly on the map, then coded in finished form later on. Problems arise in assigning various land uses to established land use categories. It is similar to building a set of storage bins, then trying to stuff them with some irregular shaped objects.

The choice of how many and what type of land use classes to use is determined by the local complexity and extent of the analyses to be undertaken. There are occasions where one or two land use classes may be divided into several sub-classes, other classes are left as aggregates. Residential land use activities are often divided into sub-classes, such as single family, two to four family, multifamily, and manufactured housing.

Physical Characteristics Study (Natural Environment)
Along with the land use study, the land's physical characteristics are assessed. Such subjects as topography, slope, geology, soils, vegetation, climate, hydrology and others are as important as our use of the land. Scientific information demonstrates that physical characteristics are, in many ways, the most important determinants of rational land use. Floods, landslides, earthquakes, vegetation and wildlife are examples of land related characteristics and events we must incorporate into our comprehensive planning process and products.

Information on the physical characteristics of the land is compiled in both written and graphic forms. Particular physical features are used to determine health and safety requirements for construction of houses, streets, and roads, utility and drainage improvements, and a myriad of other land development activities.

Physical characteristics and land use are the foundation for rational land planning, zoning, and subdivision regulations. Studies of land use and the physical characteristics of the land are fundamental for future land use planning.

Transportation Study
Background information on the movement of people and goods comprise the transportation study. The purpose is to study travel characteristics of people and goods and develop an integrated, efficient transportation system. The design of an integrated transportation system or network depends upon the characteristics of both the current system and the people and goods transported.

The transportation study generally includes information on streets, roads, sidewalks, bikeways, trails, bus systems, air service and rail services.

One of the first elements studied is the present layout and functioning of the transportation system. First, a sub-element called the "travel way" is studied, identifying past and present routes along which goods and people are transported. Second, the "vehicle" sub-element is studied to identify the transportation methods or "modes" being used. Third, the "terminal" sub-element is identified to note the concentrations of trip origination-destination information. These three sub-elements are important for understanding origination-destination information, traffic flow patterns, and street and road quality information. All of these studies are important in understanding the total transportation network.

Another element is the land use information study that provides an indirect measure of people and goods transportation. Since people and goods make trips to and from someplace, the land use information provides one way of estimating trip "originations and destinations", their purpose, length, and mode of travel. Information may be obtained by interviews with city or county officials and staff. Field studies, such as traffic counts, are often conducted. Trip Generation, published by the Institute of Transportation Engineers in Washington, D.C., is a standard reference book used for automobile trip analysis.

The characteristics of people and goods transported are studied to obtain information useful in designing and implementing more effective transportation patterns, vehicles, and terminals. People are interviewed as to their preferences for vehicle types, street improvements needed, terminal and route services, and trip necessity. Goods transported are examined for their size, space, and load requirements for designing and implementing better transportation services and facilities.

Transportation routes, capacities, and origination-destination data, terminals, and other information are prepared as overlays or separate maps. These maps are usually the same scale as the base map for easy comparison. Supporting documents are provided to show the techniques and results of the analyses. Competent transportation engineers and consultants are almost always required.

Information sources are city or county street or road departments, county commissioners, the Montana Department of Transportation, and the Institute of Transportation Engineers.

Housing Study

Fundamental to the concept of "community" is housing. Housing studies attempt to determine the type, size, area and quality of housing in the community. These studies also include information on "isolated" housing such as farms, ranches, and vacation homes in the planning area. Information is supplemented by U.S. Census or data survey information on the occupants of all these housing units, including certain economic and social characteristics. Because most housing is built by the private sector, bankers, builders, developers, and real estate agents need to be consulted in gathering data on housing needs, problems, and options for the future. The purpose of these studies is to determine housing needs and demands, as well as special housing problems of low and moderate income

people, special groups and migrant or seasonal occupants.

Housing studies usually trace the trends in mortgage financing, market conditions, housing conditions and housing quality (deterioration, blight, needs for building codes, etc.). All this information is then related to land use, transportation facilities, employment, health, recreation and public facilities, to produce an implementation plan for meeting local housing needs.

Special Studies
Background studies are sometimes undertaken on subjects that are special to the community, such as:

1. environmental quality,
2. the central business district,
3. waterfront development,
4. recreation facilities and services,
5. cultural facilities and services,
6. particular governmental functions (taxation, regional or multi-jurisdictional cooperation and sharing),
7. community blight and renewal possibilities,

Special studies are useful since each community has some unique qualities or conditions that need greater examination. In single resource-dependent communities there may be a study of possible economic diversification or the extent of local, economic dependency.

Summary of Background Studies
A variety of background information and studies are undertaken to produce a greater understanding of the community and as preparation to developing plans for guiding growth. Such broad topics as economics, population, land use, transportation, physical land characteristics, public facilities, public services and housing are examined in varying detail, related to each other, and produced as community studies. Those characteristics and items capable of being mapped are graphically displayed on base maps of the planning area. Visualizing such information aids in understanding the immense information, helps to discern physical relationships and provides for easier conclusions and plans.

There are two key features of comprehensive planning: analysis of factual information and its projection in to the future. Information provides the facts and figures for understanding our past and immediate present. Projection is a technique whereby we estimate future events, wants and needs. In a few words, we plan so as to assist future development.

Information sources are published and unpublished information, and individuals in our local communities, whether they be private citizens or public employees. Specific agencies, organizations, groups or individuals can provide a varying amounts of information, technical assistance and support for local comprehensive planning.

It is the purpose of these studies to provide an understanding of the "whole" community, which requires integration of the separate background studies. Understanding the whole planning area and its complex processes allows us to make plans that assist the development of our future. Individually we may not know everything, collectively we can try.

STEP 2. GOALS AND OBJECTIVES; DEVELOPMENT OF MASTER PLAN

Goals and Objectives

With background facts and studies in hand, the community enters one of the most important phases of comprehensive planning: the formation and recording of community goals and objectives. The development of goals and objectives provides the framework for the master plan. Public participation in the formation of community goals and objectives is crucial.

Community planning must provide a variety of opportunities for the citizens to participate. Planning is a democratic public process in which everyone has an opportunity to express their views on community goals, needs, problems, and opportunities. There are many methods which can be used to encourage public participation. A few of these include: informal neighborhood and town meetings, citizen questionnaires, media coverage, open houses, distribution of printed materials, presentations to civic groups, public hearings, and so on. At a minimum a community needs to have a strategy to continually involve the public, and the community must comply with Montana statutory requirements on public participation.

Goals and objectives are published expressions of a community's social, economic, and physical needs and desires. They are intended to guide the growth and development of the city/town, county, or other planning area.

There are at least three areas of goals and objectives:

1. The first are broad, inclusive goals normally expressed in a introduction of the master plan.
2. The second are the more specific objectives expressed in the master plan elements, such as in the land use, transportation and capital improvements elements.
3. The third, are policies which are usually quite specific to the implementation level, such as the zoning ordinance, subdivision regulations and various codes.

The goals and objectives in each of these successive specific levels are subject to their "useful life". A master plan's goals and objectives are normally long range, geared to developments and changes for the next 3 to 5 years. Various master plan elements (land use, transportation, etc.) are similarly long ranged from 3 to 5 years. As experience develops, there will be necessary changes more often. Finally, the implementation tools (zoning ordinance, subdivision regulations, etc.) are normally short ranged, and reviewed and revised within a two to three year span. In actual practice, these times vary greatly as changes often occur with bewildering speed. The idea is sound, however, that the master plan is intended to provide guidance for a long range period. Implementation tools provide guidance for shorter range periods and ensure movement toward the long range goals and

objectives.

Basic Characteristics of the Master Plan

After goals and objectives have been established they provide the framework for developing the master plan. As noted before, the master plan is prepared as a broad guide for desirable changes in the community. There are six basic characteristics of a master plan. A master plan should be:

1. comprehensive,
2. long range,
3. general,
4. physical development focused,
5. relating physical design and development to social and economic goals, objectives and policies, and
6. is first a policy statement and second a technical guide. *

*Goodman, William and Freuad, Eric. Principles and Practice of Urban Planning, (Washington, DC: International City Managers Association).

Montana statute describes the master plan in general terms. See 76-1-601 MCA through 76-1-606 MCA.

Master Plan Contents

The master plan contents may be divided into major sections as follows:

1. Introductory material, including what the master plan is, why it is needed, and how it should be used and implemented. Letters of transmittal, acceptance, recognition, and the governing body's adopting resolution should be included.
2. Background information, where discussions of growth, current conditions, and predictions/projections of future trends are presented. This section summarizes the background studies and analysis and shows the basis for the policies guiding the physical development and land uses in succeeding sections. As this point, summaries are sometimes included. These are the more important ideas in the master plan, abstracted and presented as statements with accompanying illustrations. They are not as detailed as the following elements, and only present key features of the master plan that follows.
3. Physical development proposals, and policies, are described and illustrated. Reference is made throughout this section to the master plan's maps.
4. "Standard" technical elements usually in a master plan include: a historical element, a population and economic trends element, a physical characteristics (natural environment) element, a land use element, a transportation element, a capital improvements element, a housing element, and an implementation options element. The community's goals and objectives are sometimes stated in a separate element. Other approaches include stating the goals and objectives in the introduction or in each element. Besides the standard elements, there may be some special elements or features included. Such things as community design,

community renewal, special neighborhood concerns, central business district development, economic development, agriculture, open space, and recreation are often included as part of the plan.

5. Concluding material, where overall recommendations and implementing the plan may be discussed. The implementation discussion is often found in the Master Plan document as a separate chapter entitled "Implementation Options Element". Also included in this material is a large map of the proposed land use plan, where probable future land use is delineated to show the most desirable and favorable development for the community or county.

The final adopted master plan may be published as a single document including the maps, drawings, photographs, tables and charts used to illustrate any portions. The proposed land use map showing future development is sometimes included as a folded map inside the front or back cover. A convenient size for the final document is 8 ½ x 11 inches, bound in a loose leaf binder or other form to make it easier to insert updates or changes. The publication need not be so fashionably produced that it precludes its straightforward, working character and purpose.

Master Plan Elements

The following standard elements are generally found in the master plan as separate chapters:

Historical Element: The historical element provides a brief history of how the community developed and changed over time. Implications for future planning are noted. The element may include information on historical sites and resources. Opportunities to protect or enhance historical sites may be presented.

Population and Economic Trends Element: Population projections and economic trends are fundamental to the master plan. This element identifies whether the community is growing, stagnate, or declining in population. The element documents where a community is growing (what areas of the town or county), as well as, how much a community is growing. Future population projections are presented. Often there are two or three population projections or scenarios based on different assumptions. Economic information is summarized. The results of economic base studies, business surveys, and other information about where the local economy is and where it is going is presented. The community's economic strengths, weaknesses, and opportunities are discussed.

Physical Characteristics (Natural Environment) Element: In this element, information on topography, slope, geology, soils, vegetation, hydrology, wildlife, and other topics is presented. The interrelationships between different environmental characteristics, human activities, and land use is discussed. Environmental restraints for different types of land development activities and land use activities are identified. Key natural resources which may need additional protection or accommodation are also identified. Maps, map overlays, photographs and illustrations are helpful in understanding how the many complex ecological factors interrelate with land use and land development.

Land Use Element: As an element of the master plan, the Land Use Plan emerges from integrating the background studies and goals and objectives with population and economic projections. Future land use requirements are generally projections of current space requirements in present land use classes modified by anticipated needs. Certain "space standards" are established for land use classes and generally matched with the goals and objectives. Next, is a series of evaluations identifying alternative land development scenarios and narrowing these alternatives to the most desirable one for the community. The elimination of various land use alternatives is performed by detailed analysis and comparison of background studies and conclusions, community revenue and expenditures, social and private costs and benefits in light of development goals and objectives. The final alternative is then a "best fit" design of probable and desirable land development policy showing areas most desirable for specific land uses.

Transportation Element: Closely related to projected land use is the question of access and transportation. The physical layout and spatial arrangement of the land uses have to be logically related to a transportation network that provides easy movement of people and goods. Transportation plans are usually developed as a series of "alternatives" starting from the goals and objectives. Basic inputs are population forecasts and economic projections for the planning area and the results of field studies (such as traffic counts) and technical analysis. Based on uses of lands, density of population, and other projected socioeconomic data, various transportation zones are set out. Current statistics and other data are compiled for each zone including an estimate (based on surveys) of the number and types of trips originating and ending within these zones. Accident records may provide a coarse indication of problem interchanges and traffic bottlenecks which the plan would correct or mitigate. In most cases, professional assistance from a transportation engineer is required for preparation of the transportation element.

Capital Improvements Element: Capital improvements are major high cost public facilities which have a life of two years or more and include local government infrastructure such as public water systems, sewage systems, streets, roads, bridges, fire stations, parks, public buildings, and so forth. The terms capital improvements, public facilities, infrastructure and public works are synonymous and interchangeable. How, when, and where local government capital improvements are made, greatly affect the pattern of future land development and the public cost of providing these facilities. Adequate public facilities are crucial for protecting public health and enhancing the quality of life. The capital improvements element usually identifies in very broad terms the capital improvement needs, goals, and policies. A key focus of the capital improvements element is to relate and integrate goals for capital improvements with other community goals expressed in the master plan. For example, if a community wants to promote job creation by building an industrial park for new businesses, capital improvements such as central water and sewer line extensions for the industrial park usually will be necessary. The capital improvements element in the master plan is general. Because of the many public facilities and complex engineering and financing issues, a much more detailed capital improvements plan (CIP) and capital budget are usually prepared as a means to implement the master plan's capital improvements element.

Housing Element: The housing element discusses current and future housing needs. The detailed housing background studies document local housing market demands based on information from

home builders, realtors, bankers, and housing agency officials. Many communities want a mix of different types of housing. The housing element discusses the need for different housing types such as single family dwellings, duplexes, apartments and manufactured housing. Lack of affordable housing has been a problem in many communities. The housing element should address local affordability issues. The element may suggest geographic areas in the community which appear most suitable for new housing development, based on background studies, market analysis, availability of capital improvements, and other factors.

Implementation Options Element: The master plan may include an implementations options element, or implementation may be discussed in a conclusions and recommendations section of the master plan. Regardless of the format used, a thorough discussion of the implementation of the master plan is a crucial part of the plan. Generally, this element includes information on the master plan, the practical uses of the master plan, and the relationship of the implementation tools. Various options for implementing the plan are discussed. Pros and cons of various implementation alternatives may be discussed. General implementation recommendations are presented. Detailed information on specific provisions in implementation tools such as zoning, subdivision regulations, codes, the capital improvements plan and capital budget, are not included in the master plan. Detailed information is included in separate publications or reports for each of the individual implementation tools.

Adoption of the Master Plan

Montana statute in 76-1-602 MCA through 76-1-604 MCA sets out the basic process that a local government must use to officially adopt the master plan. Legal notice must be given. Public hearings on the plan must be held. Prior to holding the legally required hearings, a series of more informal informational public meetings should be held to solicit public input on the proposed master plan. Suggested changes from the public will improve the proposed master plan. Adequate time must be taken to consider and incorporate ideas and suggestions from the public into the proposed master plan.

STEP 3. IMPLEMENTATION OF THE MASTER PLAN

General

A number of tools are available to help implement a master plan. Planning, scheduling and financing the construction of water and sewer extensions, streets, and other public facilities can significantly save tax dollars, and can influence the location and timing of new development. A community can address problems related to affordable housing by providing assistance for rehabilitation of existing housing or construction of new housing. Conservation easements can be used to prevent intrusion of development into productive agricultural land. Adopting regulations dealing with land use and building standards are common means of implementing a community plan. In order for a plan to be truly effective, the planning jurisdiction may need to implement various types of regulations. Local government has the ability to use a variety of land use regulations such as: subdivision regulations, zoning, development permit regulations, floodplain regulations and lake shore regulations. These, and other tools, will be discussed in more detail below.

Relationship of Master Plan to Land Use Regulations

The master plan is a non-binding document that is developed through a public process that identifies land use issues and gives direction for dealing with those issues. Regulations, in contrast, carry out the direction and policy of the plan by articulating in specific language requirements that govern the use of land.

Montana law requires that zoning and development permit regulations conform to an adopted plan. In the case of Little v. Flathead County, the Montana Supreme Court ruled that land use regulations must closely conform to the master plan. In fact, before amendments to a zoning ordinance may be made, the plan may have to be amended to ensure that the zoning amendments will conform. The purpose of this requirement is to ensure that land use regulations are drafted and enforced in the context of a broad, carefully considered, public purpose. The plan is the public's expression of a planning vision for the community. Regulations adopted in conformance with a plan are less likely to be arbitrary than those adopted in isolation.

Prior adoption of a master plan is not a prerequisite for a local government to adopt subdivision regulations. In fact, state law requires all units of local government to adopt and enforce subdivision regulations regardless of whether they have a master plan. However, local governments that have adopted plans can draft better subdivision regulations. Both the Montana Local Planning Enabling Act and the Montana Subdivision and Platting Act authorize local governments to consider compliance with an adopted master plan as a criterion for approving or disapproving a proposed subdivision (76-1-606, MCA, and 76-3-604, MCA).

Subdivision Regulations

Subdivision regulations regulate the process of dividing land into lots and providing public facilities (e.g., roads, water, sewer, storm drainage) to the lots. The platting and creation of lots is not only the first phase in development, the action sets the land use pattern for the community. Therefore, proper public review of proposed land division is vital to:

(1) prevent or minimize impacts on public health and safety, the natural environment, and wildlife,
(2) ensure desirable future land use patterns, and
(3) allow cost-effective provision of public services, thereby reducing tax expenditures.

In Montana, local government subdivision regulations must evaluate a proposed subdivision's impact on a number of considerations such as the natural environment, wildlife, public health and safety, local services, and other factors. The Montana Subdivision and Platting Act (MSPA) requires all units of local government to adopt and enforce subdivision regulations, and to review and decide on development proposals that would divide land into parcels of less than 160 acres, construct one or more condominiums, or provide multiple spaces for mobile homes or recreational camping vehicles.

A subdivision must be properly surveyed, comply with local design standards, and provide legal and physical access and utility easements. Also, in reviewing subdivision proposals, local officials must issue written findings of fact that consider the effect the development would have on agriculture,

agricultural water user facilities, the natural environment, wildlife and wildlife habitat, local services, and the public health and safety. In addition, the written findings of fact must address the other criteria required by state law. See 76-3-608 MCA of Montana law. Local governments that have adopted a master plan may review a subdivision proposal to ensure that it conforms to the plan.

The Montana Sanitation in Subdivisions Act (MSIS) was enacted to ensure proper sewage and solid waste disposal, water supply, and drainage in subdivisions. Under the MSIS, the Department of Environmental Quality must approve the sanitation facilities proposed for a subdivision. Thus, a subdivision proposal must receive two separate approvals - local approval under the MSPA, and state approval of sanitation facilities under the MSIS.

Zoning Regulations

Traditional zoning is the legal method by which local governments protect the health, safety and welfare by dividing jurisdictions into use districts (zones), restrict various uses to certain zones, and impose requirements that the permitted uses must meet.

As early as the 1800's, city governments in America were preventing slaughterhouses from locating in residential neighborhoods to prevent odor and noise problems, and requiring adequate spacing between buildings to prevent the spread of fire. These early restrictions on land uses benefitted both the general public and private property owners. Modern zoning regulations still focus on preventing problems by separating incompatible uses and by requiring uses to meet standards that protect both public and private property owners.

One basic objective of zoning is to separate incompatible uses to prevent the adverse or undesirable effects they can have on one another. Another objective of zoning is to achieve a quality and character of development that ensures safe and healthy communities.

Because zoning regulates the location of various uses, the zoning map, showing precise boundaries of each use zone, is one essential part of the zoning regulations. The other essential component is the text, which specifies the required standards, necessary procedures, circumstances for requesting and deciding appeals, and enforcement and administrative requirements.

In recent years, some people have criticized zoning as ineffective, inflexible and cumbersome. In fairness, however, zoning as a land use tool is not at fault. Ineffective regulation can result from faulty drafting, or weak or inconsistent enforcement of individual zoning ordinances. Lack of explicit development policies, indiscriminate granting of variances, and lack of public support have rendered some zoning regulations ineffective. But the same problems can also affect other types of regulation. The reasons zoning may fail to be effective very likely would be the same reasons that any other type of land use regulation would fail: citizens and local official are not aware of how zoning can solve specific problems; local officials are not committed to proper enforcement; citizens really do not want effective regulations; or the regulations are unreasonable or do not reflect thoughtful planning or policies. Zoning can be an effective tool if the public understands the benefits of zoning, and if the regulations are properly drafted and enforced. Many Montana communities have adopted zoning regulations.

While the incompatibility of differing land uses may be overcome without separating the uses, the techniques for doing so are often expensive, and the costs may fall on taxpayers. Separating incompatible uses through zoning often may be the most direct and least costly means of protecting school children, maintaining a viable business district or a pleasant and safe residential neighborhood, or assuring a functional and safe industrial area. Thus, zoning can provide real benefits to citizens and communities.

In Montana, three different statutes authorize local governments to enact zoning regulations. Cities and towns may adopt and enforce zoning ordinances under the Municipal Zoning Enabling Act; counties may enact zoning under the County Zoning Enabling Act. The third zoning enabling statute, the County Planning and Zoning Commission Act, allows a county to enact land use regulations for an area within the county where at least 60 percent of the property owners sign a petition requesting formation of a district and adoption of regulations.

Master Plan. Both the Municipal Zoning Enabling Act and the County Zoning Enabling Act require that the local government have an adopted master plan for the jurisdiction, and that the zoning regulations conform to the plan. The statute authorizing zoning by petition does not require the county to have an adopted master plan, but the planning and zoning commission must prepare a "development pattern" for the district that identifies the desired location or requirements for future development.

Board of Adjustment. Under any of the three zoning enabling statutes, local zoning regulations must provide a process for hearing and deciding appeals. For municipal and county zoning, the governing body is required to appoint a board of adjustment to make special exceptions, grant variances, and hear appeals of decisions by the zoning officer. The purpose of the appeal process is to allow the developer, or any affected person to appeal a zoning decision without having to go directly to court. A property owner also may appeal for relief from zoning requirements if, because of the shape, configuration, topography or other circumstance of his particular property, requiring him to comply with the requirements would create real difficulty or hardship. Other persons may appeal if they feel that granting a zoning permit will cause them harm.

Interim Zoning Regulations. Municipalities and counties are authorized to adopt interim land use regulations while a comprehensive plan is being prepared and adopted. The purpose of interim zoning is to protect the integrity of the prospective plan from incompatible development during the time the plan is being prepared and adopted.

Protest of County Zoning. Under the County Zoning Enabling Act, when 40 percent or more of the property owners protest a proposed zoning regulation, the county commissioners may not proceed in adopting the proposed zoning for at least one year.

The state enabling statutes impose very few requirements on the substantive content of the regulations. As long as they satisfy reasonableness and due process requirements, local officials have broad discretion to draft and adopt regulations that suit their community's needs and satisfy the desires and expectations of the local citizens.

Extraterritorial Provisions. The Municipal Zoning Enabling Act allows a city or town to adopt extraterritorial zoning -- regulating land use in the unincorporated area contiguous to the city limits. The rationale for this extraterritorial zoning authority is to allow a municipality to ensure that adjacent growth will be well designed and compatible with the land use patterns in the city.

Development Permit Regulations

Many planners and local officials in Montana have expressed interest in alternatives to traditional zoning as a means to regulate land use. One alternative that can be enacted under existing state enabling statutes is a system called by a number of terms: permit system, performance zoning, performance standards and development standards. In this manual the term "development permit regulations" is used to include all of the various land use permit systems.

As mentioned, development permit regulations focus primarily on the character or quality of new development, with less concern on the location of the development. Development permit regulations may be adopted under any of the three zoning enabling statutes and under the same procedures set forth for zoning. As with zoning, the regulations must provide for an appeals process.

Because development permit regulations implement development policy, the master plan should be written so that a logical rationale flows from statements of planning issues, through statements of goal and objectives to statements of development policy. **Specific regulations should be tied to explicit policies; policies should be tied to clear goals.** If clear goals and explicit policies have been adopted, appropriate regulations should readily emerge. The attitudes of citizens and governing officials, and the identified land use problems, will also help suggest what types of regulations and what degree of restriction is appropriate in each jurisdiction.

1. Development Standards

Development permit regulations that simply state the standards or requirements new development must meet are the easiest form of land use regulation to draft and enforce. If the comprehensive plan expresses clear and explicit policy statements, drafting specific regulatory language as development standards that implement the policies should be fairly easy. Development standards are commonly drafted to regulate:

- Traffic: street widths and grades, street drainage, access points, circulation networks.
- Off-street parking and loading areas: number of spaces, access, circulation.
- Access by emergency vehicles: street and cul-de-sac widths, road grades and curves.
- Unsuitable areas: flood hazard, fire hazard, steep slopes, high ground water, lake and stream shores, wetlands.
- Effects on agriculture: protect irrigation systems, livestock, water supplies.
- Buffering or screening of adjacent uses: height, location, and materials.
- Signs: size, height, location, and materials.
- Setbacks: from streets, lot lines, surface waters.

2. Point Systems

Adopting requirements that outright prohibit or require certain actions may not be feasible or desirable, even though the regulations would help achieve a public purpose. The requirements or prohibitions may be too restrictive to meet legal or constitutional tests. In other cases, the requirements may not be politically acceptable to local citizens or the elected officials.

Development permit regulations can incorporate a point system that awards points to encourage desirable actions and assigns negative points to discourage undesirable actions. A development's composite score determines whether or not it receives approval. Such point systems often are considered to be more flexible (and thus less restrictive) because a developer may offset a low score on one provision with high scores on other provisions. Because of this flexibility, and the fact that awarding points is very different from the precise, restrictive requirements of traditional zoning, point systems may be more readily accepted in rural areas and small towns. Also, in addition to offsetting low scores, the local government can reward developers for high scores by such incentives as paying part of the cost of constructing certain improvements, such as roads or utility lines.

The logical use of a point system is to urge developers to take, or not take, actions that the local government is unwilling or unable to outright mandate or prohibit. The following are actions that are desirable or undesirable, but the local government may not want to require or prohibit these actions outright:

Encourage:

- Development in preferred locations:
  - near existing services
  - in or adjacent to communities
  - less productive lands
- Cluster development
- Underground utilities
- Affordable housing
- Landscaping
- Appropriate architecture
- Energy conservation

Discourage:

- Development in undesirable locations
  - agricultural land
  - wildlife areas
  - sensitive areas
- Strip commercial development

Point systems are more difficult to draft and administer because of the necessity to establish a proper relationship between point values and the relative importance of each provision and to create a proper balance among the various point values. In addition, assigning point values to a particular development can be highly subjective.

Floodplain Regulations

Floodplain regulations are enforced to prevent loss of life and excessive property damage; protect public health and safety; and reduce public tax expenditures for emergency evacuation and restoration. In addition to preventing property loss and human injury, floodplain regulations indirectly protect riparian areas and natural stream banks.

Local governments are required by law to administer regulations relating to development in floodplains, if the Montana Department of Natural Resources and Conservation (DNRC) has adopted delineated 100-year floodplains in their jurisdiction. Both federal and state agencies have set minimum standards regarding types of development allowed in delineated 100-year floodplains. Delineated 100-year floodplains are those lands bordering a stream that are inundated by a flood event equaled or exceeded, on average, once every 100 years. In any year, there is a one percent chance that a 100-year flood will occur. The DNRC officially delineates 100-year floodplains, using detailed hydrological methods, as well as topographic and historic data.

A floodplain comprises two zones: the "floodway" that carries flood waters of faster velocities, and the "flood fringe" that consists of the flood storage and backwater areas and is subject to low water depths and velocities. In the floodway, prohibited uses include: residential, commercial and industrial structures. Prohibited uses in the floodway and flood fringe include: land fills, septic systems, and storage of toxic, flammable, or explosive materials.

Lake Shore Regulations

A specific Montana statute (75-7-201 *et seq.*, MCA) authorizes local governments to adopt lake shore regulations to protect the shore or bank of natural lakes and man-made reservoirs. Lake shore regulations apply to any construction or shoreline alteration within the lake shore protection zone - the land within 20 horizontal feet of the mean annual high-water mark. Lake shore regulations also can be adopted under zoning statutes.

Conservation Easements

A conservation easement (76-6-101 *et seq.*, MCA) is a voluntary legal agreement a landowner enters into to restrict the type and amount of development that may occur on his property. Such an easement ensures that the resource values of the land will be protected indefinitely, regardless of who the owns the land in the future. The landowner grants an easement to a public agency or to a qualified private tax-exempt organization. If the conservation easement meets federal requirements, property owners can be entitled to reductions in income and estate taxes. Each easement is different, tailored to the specific needs of the landowner, while assuring that conservation objectives are met. Conservation easements may prevent subdivision development; construction of new residential, commercial and industrial structures; activities resulting in soil erosion or water pollution; mining; and degradation of fish and wildlife habitat. Local governments can work with tax-exempt organizations and property owners to promote and facilitate preservation of productive agricultural lands, or other lands that contribute to the values and assets of the community. Under Montana law, the local planning "authority" is required to review conservation easements (76-6-206, MCA).

Capital Improvements Plan and Capital Budget

An important tool for implementing master plan goals, objectives, and policies is the use of a community capital improvements plan and corresponding capital budget. Capital improvements are major, high cost public facilities or public works which have a life of two years or more and which can not be funded from one year's operating budget. Capital improvements include local government infrastructure such as public water systems, sewage systems, streets, roads, bridges, law

enforcement facilities, public buildings, and so on. A capital improvements plan or "CIP" is a local government's plan to prioritize, finance, and construct or repair public facilities over a five year period. To appropriate money to pay for the CIP, the local governing body needs to adopt a capital budget as part of its annual budget. State and federal grants and loans are often used to fund some of the projects in a community's CIP.

The objective of the CIP is to match needed improvement projects with revenue and financing sources to ensure that public facilities will be repaired, expanded, or constructed as required by future growth, public health and safety, or other community needs. How, when, and where public facilities are provided greatly affects the pattern of future land development and the public cost of providing these facilities.

There are many specific benefits to preparing and carrying out a CIP. The CIP furthers the master plan's development goals and policies by encouraging development to locate where adequate facilities (such as central public water and sewer systems) are available. This reduces the cost of new development and growth for local governments, developers, and residents. A CIP can be used to encourage land development where and when a community wants it and, on the other hand, to limit land development pressures in areas where a community deems certain types of development inappropriate. A major benefit of preparing and carrying out a CIP is that it reduces the public cost to repair or construct capital improvements by improving the efficiency of the design of facilities, coordination in scheduling projects and selection of the most cost effective financing options for each project. Developers and business persons also benefit from a CIP because they will have a better idea as to where and when capital improvements will be made by the local government. Another benefit is that a CIP can help local governments obtain grant funds for construction of public facilities from state and federal agencies.

Usually the master plan discusses the needed capital improvements in broad terms. The CIP is the detailed plan and funding analysis needed to analyze, plan, and schedule specific improvements. The local government usually sets up a committee to develop the CIP and advise the governing body on the capital budget. At a minimum, the CIP should contain:

1. A list of needed capital improvement projects for several or all of the public facilities managed by the local government,
2. Clear priorities for funding and constructing the improvement projects (the needs list is put in priority order),
3. Potential and recommended funding sources to pay for each project, and
4. A rough time schedule for each project.

The CTAP has several books available on the CIP process. In addition, the CTAP has information on potential funding sources for capital improvements.

Special Plans

A number of communities want to implement activities that require preparation of special plans that address issues that usually need more detailed planning than can occur in the comprehensive plan.

These special plans should be based on the comprehensive plan and should generate additional specific or detailed information and policies. For example, to implement programs such as downtown redevelopment or historic preservation, plans need to be formulated that focus in detail on a specific geographic area and on policies and recommendations dealing with redevelopment or historic preservation.

To effectively address local needs for affordable housing, a local government needs to prepare a housing plan, both to fully understand their housing needs, and to qualify for state or federal assistance programs. Housing plans quantify the numbers and types of existing housing units, units owned by low- and moderate-income families, units in need of rehabilitation, and the additional needed units within various price and rental ranges.

Economic development plans concentrate on opportunities to expand employment, encourage business start-up, retention or expansion, and on means of minimizing or eliminating constraints to economic growth. Other examples of special plans are: parks and recreation plans, agricultural plans, open space plans, transportation plans, neighborhood plans, corridor plans, and plans to address specific impacts such as coal or hard rock mining.

STEP 4. EVALUATION

"Planning" is a service provided by a government to its citizens. It is a service that should be as streamlined and effective as possible. Over time changes will occur within every community. New issues will arise or issues that were previously not so important may become serious. Local planning programs need to address changes that occur within the community by regularly evaluating the program and the tools the program provides.

Evaluation is a key step in comprehensive planning. Evaluation helps the community to monitor and improve the planning process and planning products. Evaluation provides an opportunity to adjust the process and products as goals, circumstances, or needs change. At least once a year the board, staff, and governing body should meet and evaluate the master plan and the tools used to implement it. The board will want to review the previous year's work. Specific evaluation criteria can be developed, such as:

1. Are the community's goals current and valid?
2. Have there been changes in the information, assumptions, needs, or legal framework?
3. Does additional public input suggest we need to make changes?
4. Is our community planning process and planning products "working" in general terms?
5. Where did problems occur?
6. What specific modifications would improve our community's planning process?
7. How can this plan better serve the expressed desires of the public?

It is helpful to evaluate both the planning process (such as ongoing public participation) as well as specific planning products (such as the local government's subdivision regulations). While evaluation can be ongoing, it is also helpful to set evaluation "benchmarks" based on specific work items. For example, when a community is preparing or updating a master plan, the community master plan should be thoroughly evaluated at the first draft stage after public input on the draft has been solicited and public comments have been received.

A community that is practicing ***LEARN, LISTEN, TEACH, AND FACILITATE,*** and has been holding regular public meetings will be more aware of what changes are occurring and how best to address them.

APPENDIX G

I. PUBLICATIONS AND AUDIOVISUALS RELATED TO COMMUNITY PLANNING AND DEVELOPMENT AVAILABLE FROM THE MONTANA DEPARTMENT OF COMMERCE COMMUNITY TECHNICAL ASSISTANCE PROGRAM (CTAP)

The following publications are currently available to assist local government representatives, development groups, citizens, and the private sector. The publications are listed alphabetically under a general category heading (Community Planning, Subdivision Regulations, Zoning, Grants and Financing, and Other Local Government Topics). Prices for publications are based solely on the cost to the State to print these publications. Prices may change when additional copies of publications are printed. If prices change and we receive a written order at the old price, we will bill and ship at the new price. The Community Technical Assistance Program (CTAP) reserves the right to discontinue publications. All publications are available on loan from the Montana State Government Library in Helena (444-3004). Combining an audiovisual presentation with these publications is an effective educational method. The audiovisual list follows the list of publications in this document.

The Community Technical Assistance Program has on file: more than 100 master plans (comprehensive plans) for cities, towns and counties, economic development plans, long range transportation plans, and open space and parks plans. The program also has on file a wide variety of information on planning and development subjects. Please contact CTAP for more information at (406) 444-3757.

A. COMMUNITY PLANNING

A Guide to the County Land Planning Funds. June 1986. Published by CTAP. Describes eligible uses of the County Land Planning Funds, a Montana Coal Severance Tax grant program that provides grants to local planning boards. Also explains management and accounting procedures for the use of the funds.

Primer on Land Use Planning and Regulation for Local Governments. May 1994. Published by CTAP. The Primer covers the basics of planning including: what is planning, why plan, benefits of planning, roles and responsibilities, perceptions of planning, how to implement a planning program, funding a planning program, and affordable housing and how it relates to the previous issues. The Primer provides basic information on comprehensive planning, land use regulations, and capital improvements planning.

Bibliography of Affordable Housing Booklets for Montana Local Governments. December 1994. Published by CTAP.

Montana's Annexation and Planning Statutes, 12th Edition. November 1997. Published by CTAP. *Price $3.50.* A compendium of Montana's state laws governing annexation, planning, subdivision review, and zoning. Updated after each legislative session.

B. SUBDIVISION AND SURVEYING REGULATIONS AND PROCEDURES

A Handbook on Local Land Use Regulation. August 1994. Published by CTAP. The handbook provides the basics on land use regulation: why, benefits, history, legal framework, what to regulate, and housing affordability options and recommendations. It provides detailed, technical, how-to information on drafting and updating zoning and subdivision regulations. The handbook also discusses reasonable regulations that prevent barriers to affordable housing.

A Manual for the Administrator of the Montana Subdivision and Platting Act, 2nd Edition. August 1994. Published by CTAP. A detailed technical explanation of the steps involved in local government review of subdivision proposals (and exempted divisions of land including certificates of survey) under the Montana Subdivision and Platting Act. It is aimed primarily at the Administrator of the MSPA (e.g., planning staff or equivalent) but also will prove helpful to planning board members, and governing bodies. Useful reference for planning boards which do not have professional staff to assist them. Extensive appendices on critical subdivision issues: legal opinions, evasion criteria, review fees, improvements agreements, fiscal impact methods, etc.

Montana Model Subdivision Regulations. June 1995 (addendum). Published by CTAP. A model regulation that Montana county and municipal governments may use as a reference to draft their own regulations. Incorporates all mandatory state laws, administrative rules, court decisions, and attorney general's rulings. Updated periodically.

Montana's Subdivision and Surveying Laws and Regulations, 17th Edition. February 1994. Published by CTAP. *Price: $4.50.* A compendium of Montana state laws and state agency administrative rules which provides the framework for subdivision review. Includes a list of binding legal opinions (court decisions, attorney general opinions) on the Subdivision and Platting Act. Updated after each legislative session.

A Primer: Subdivision Review Under The Montana Subdivision And Platting Act, Second Edition. Published by CTAP. July 1996. An introduction to land subdivision regulations in general, and to the Montana Subdivision and Platting Act (MSPA) in particular. Written for the layperson and intended to provide guidance to local governments, landowners, developers and citizens. Explains reasons for subdivision review, the history of the act and the general steps in reviewing subdivisions proposals.

C. ZONING

A Handbook on Local Land Use Regulation. August 1994. Published by CTAP. The

Handbook provides the basics on land use regulation: why, benefits, history, legal framework, what to regulate, and housing affordability options and recommendations. It provides detailed, technical, how-to information on drafting and updating zoning and subdivision regulations. The handbook also discusses reasonable regulations that prevent barriers to affordable housing.

Model County Development Permit Use Regulations. April 1995. Published by CTAP. The Model is a reference that governing bodies and staff can use as a tool in drafting their own regulations. The Model covers: procedures for reviewing applications, issuing permits, handling appeals, and standards that guide new developments. The Model discusses the importance of protecting agricultural land and farm and ranch operations.

Model Municipal Zoning Ordinance. April 1995. Published by CTAP. The Model can be used by municipal officials and staff to draft their own regulations. The Model covers: procedures for reviewing applications, issuing zoning permits, handling conditional use permits, and dealing with appeals. The Model suggests appropriate substantive requirements.

Montana Planning And Zoning Law Digest. Published by CTAP. April 1996. A comprehensive summary of judicial decisions and Attorneys General Opinions related to the law of planning and zoning in Montana.

Rural Zoning: People, Property, Public Policy. Cooperative Extension Service, MSU. Bulletin 331. April 1975. Distributed by CTAP. Discusses pros and cons for rural county zoning. Good basic information on zoning for planning boards, county commissioners and other interested parties.

D. GRANTS AND FINANCING FOR LOCAL GOVERNMENTS (PUBLIC WORKS AND LAND USE PLANNING EMPHASIS)

Affordability of Major Wastewater Systems Improvements for Small Montana Communities. October 1990. Published by CTAP. A report of findings and recommendations regarding the difficulty small Montana communities have financing needed sewer facilities.

A Guide to Grants for Community Planning and Development Projects in Montana - Resources for City and County Governments. Published by CTAP. December 1995. A guide to "non-traditional sources" for planning and development grants, such as grants from private foundations and competitive federal programs.

Grants: Getting Ready and Research Methods. March 1986. Published by CTAP. An outline of the major issues that a local government or nonprofit organization need to address before putting together "fundable" grant applications. Explains the basic grant research tools available: grant books, grant newsletters, computer databases, research contacts, etc. *A Handbook: Capital Facilities Scheduling and Financing.* May 1995. Published by the Local Government Assistance Division. An overview of the capital improvements planning and

financing process. Explains how to do a capital improvements plan (CIP) under Montana law.

How to Write A Grant Proposal: A Modular Approach. March 1985. Published by CTAP. A simple, effective outline approach to how to write a grant proposal. Applicable to private sector grants programs.

The Mini Capital Improvements Plan For Small Towns, Third Edition. March 1996. Published by the CTAP. This document is written for the non-engineer, and it provides local officials and public works directors for small towns and county water/sewer districts with a straightforward description of the capital improvement planning and budgeting process for water systems, sewer systems, and streets. The Mini Capital Improvements Plan (MCIP) provides the essential tools required to evaluate local needs, identify priorities objectively, identify costs and funding sources, and ultimately, schedule construction projects.

Multipurpose Foundation Grant Programs for Montana, Sixth Edition. September 1992. Published by the CTAP. This brief publication lists eight major multipurpose private foundations that provide numerous grants (in a wide range of categories) to Montana communities. Also included is a brief summary on how to do more detailed, custom research.

Planning and Financing Community Water and Sewer Systems in Montana, Fourth Edition. July 1997. Published by the Treasure State Endowment Program. Written for the layperson and intended for local governing bodies and staff. Designed to provide an easy to understand overview of the process of planning, developing, and financing a water or sewer system. The book explains all the known ways to finance a water or sewer system in Montana -- including grants, loans, user fees, hookup fees, and other methods.

Potential Grants For Special Local Land Use Planning Projects From Private Foundations. July 1991. Published by the Community Technical Assistance Program. This publication contains a brief summary of foundations that may consider making grants for local planning projects in Montana. Also enclosed is a copy of the telephone survey form that was used to prepare the summary. This information may help city and county governments or non-profit groups secure foundation funding for a special local planning project.

The Public Works Money Database: (brochure). June 1992. Published by the Community Technical Assistance Program. The Public Works Money Database (PWMD) is a computerized rapid way to find grants, loans, and other financial options for Montana community public works projects. The PWMD has every known funding source (federal, state, local, private) for Montana public works construction projects. Information is available on 39 different types of public facilities (such as airports, senior citizen centers, nursing homes, water systems, etc.). This brochure explains how to find new financing ideas for a community facility project by using the PWMD.

Rural Special Improvement District Handbook. May 1986. Published by the Community Technical Assistance Program and the Montana Community Development Block Grant Program. *Price: $1.25.* Describes how to create rural special improvement districts, and how to minimize RSID defaults and cash flow problems.

Special Improvement District Handbook, Second Edition. May 1986. Published by the Community Technical Assistance Program and the Montana Community Development Block Grant Program in association with the Montana League of Cities and Towns. Describes how to create special improvement districts and how to minimize SID defaults and cash flow problems.

E. AUDIOVISUALS

The following audiovisuals are currently available from the Montana Department of Commerce on a loan basis. Audiovisuals are normally loaned for one month. Note that CTAP publications are available on some of the topics addressed by the following audiovisuals. Combining an audiovisual with booklets is an effective educational method. Interested parties should contact the Community Technical Assistance Program at (406) 444-3757.

Building Support For Increasing User Fees. (VHS Videotape - 22 minutes, accompanied by a publication) Produced by: Environmental Protection Agency. July 1989. Public education is the single most important consideration when increasing water and wastewater fees. This video and publication tell how to identify the problem, shape the message, deliver the information, evaluate your efforts and document the results. Also, there's a success story included so you can see how one community built support through public education.

For the Common Good: Preserving Private Lands with Conservation Easements. (One-Half Inch VHS Videotape -- 16 minutes) Produced by: The Land Trust Exchange. 1985. An introduction for laypersons on the "conservation easement," a voluntary method used to preserve private lands from development. Provides a national perspective on how conservation easements have been used to preserve land. Also provides a Montana example of the use of conservation easements (Blackfoot River Project). Useful for public discussion of alternatives available to carry out community conservation goals.

History, Purpose and Need for Subdivision Regulations. Produced by: Chris Rockey, Planning Director, Missoula Office of Community Development. September 18, 1986. A discussion of how subdivision regulations evolved over time from the need to describe a single tract for sale to the regulation of development of large scale multifamily, commercial, or industrial development to protect public health and safety. It discusses the need for subdivision regulations in Montana for mitigating natural or man-made hazards in providing building sites. Explains the regulatory role in ensuring that needed public improvements are installed in new developments. Useful for educating laypersons on the basic need for subdivision regulations.

Land Trusts in America: Guardians of the Future. (One-half-inch VHS videotape) 18 minutes. Produced by the Land Trust Alliance. 1991. This tape deals with what people are doing to form, join, support and work with land trusts to safeguard open space and wildlife habitats.

Montana Association of Planners, Spring Conference, 1986: Training Session for Planning Board Members. (A Set of Three One Half-Inch VHS Videotapes). Produced by: Gary Stevens, Chairman, Fallon County Planning Board, Baker, Montana. April 1986

Tape 1: Current Planning Enabling Statutes Richard M. Weddle, Attorney, Department of Commerce -- History of Zoning; Factors That Courts Consider When Looking at Zoning Regulations.

Role of the Planning Board
Chris Rockey, Planning Director, Missoula Office of Community Development -- Long Range vs. Short Range Planning Functions of the Planning Board.
John Darling, Planning Director, Yellowstone County Planning Office -- Political Role of the Planning Board.

The Comprehensive Plan, New Ideas
Jim Richard, Planning Consultant -- Traditional Comprehensive Planning vs. Policy Plans; Chouteau County Policy Plan.

Capital Improvements Planning (CIP)
Jim Richard, Planning Consultant -- Overview of Capital Improvements Planning - John Beaudry, Planning Director, Stillwater County -- Practical Implementation of a CIP in Stillwater County.

Issues and Problems of Being a Planning Board Member
Member of the Great Falls City-County Planning Board

Tape 2: The Montana Subdivision and Platting Act (MSPA)
Jim Richard, Planning Consultant -- An Overview of the MSPA; Why Planning/Subdivision Review is Necessary.
Richard M. Weddle, Attorney, Department of Commerce -- Legal Decisions and Opinions Related to the MSPA.
Andy Epple, Planning Director, Park County -- Elements of Local Government Review of Subdivisions; Discussion of Park County's

Subdivision Construction Design Standards
Dan Obermeyer, Planning Consultant, Missoula -- Discussion of Natural Features such as Slopes, Flood plains, Soils and Vegetation and Their

Relationship to Subdivision Construction Design Standards.
Bill Walters, Current Planner, Great Falls City-County Planning Office -- Discussion of Engineering Requirements for Water, Sewer and Other Public Facilities in the Subdivision Approval Process.

Tape 3 — Decision Making by Consensus
Cindy Willis and Ann Reicker, Montana Leadership Development Association -- How to Encourage Decision Making by Compromise and Cooperation as Opposed to Confrontation.

Montana's Infrastructure Needs (VHS Videotape) Produced by Jack Vaughn for the Montana Department of Commerce, Community Technical Assistance Program with assistance from the Montana State University Film Department. August 17, 1984. Montana communities need more than $9 billion to pay for basic public works -- water systems, sewer systems, roads, airports, bridges, etc. This tape summarizes Montana infrastructure problems. It is a useful introduction to why public works are important to our everyday life. Useful for community meetings to explain local public works issues from a broader, statewide perspective.

Planning Workshop Series (A Set of Six VHS Videotapes) Produced by: Northwest Montana Human Resources, Inc., Kalispell, Montana. March 11-12, 1987 (The workshop materials were presented primarily by Jim Richard, Planning Consultant).

Tape 1: Role of Elected and Appointed Officials -- Covers the Roles and Responsibilities of Governing Bodies, Planning Boards, Zoning Commissions and Boards of Adjustment.
Roles and Responsibilities of Flathead Regional Development Office and Lake County Land Services Department.

Tape 2: Master Plan -- Legal Basis for a Plan; Development of a Plan: Content of a Plan; Traditional Master Plan vs. Policy Plans.

Tape 3: Movie -- "Flathead Land Trust: Conservation Easements."

Tape 4: Relationship of Master Plan to Development, Growth and Economic Development -- How can the Master Plan be used to Guide Growth and Promote Economic Development.

Tape 5: Zoning vs. Development Regulations; Variances and Conditional Uses.

Tape 6: Subdivision Regulations -- Overview of the Montana Subdivision and Platting Act; Subdivision Plats vs. Certificates of Surveys; Types of Subdivision Review.

The PUD Film (One 16 mm Movie) Produced by: National Association of Home Builders. Circa 1970's. The movie explains the Planned Unit Development Concept (PUD). It points out how a PUD, which incorporates clustering of development and provision of common open space, can save tax dollars because it requires less miles of utilities and roads per dwelling unit. It also discusses how PUDs protect natural features through flexibility of design.

The Role and Responsibility of the Planning Commissioner. (VHS Videotape -- 40 minutes) Produced by: Municipal Video Project with Pappas Teleproductions Date: 1988. An introduction to the job of the planning commissioner (planning board member). A useful tool for training new planning board members on their roles and responsibilities in the planning process. Points out the relationship between the planning board and various elected bodies. Discusses the importance of the comprehensive plan and its various elements such as the land use plan and the transportation plan. Also discusses tools to implement the comprehensive plan such as zoning, subdivision regulations, capital improvements planning, and planned unit developments. Points out the importance of public participation in the planning process. Emphasis on California planning law. Useful "refresher course" for experienced planning boards. The video focus is on urban planning.

Shifting Sands: The 1992 Supreme Court Rulings on Land Use Law. (A set of two VHS Videotapes; each tape is one hour in length and is accompanied by a workbook). Produced by: American Planning Association American Institute of Certified Planners. 1992. A package consisting of two videos and a workbook, that will help planners, land use lawyers, and planning officials keep abreast of the recent Supreme Court decisions. The AICP Video Education video and accompanying workbook brings five expert land use lawyers together to discuss four Supreme Court cases. The cases are: PFZ Properties v. Rodriguez, Nordlinger v. Hahn, Yee v. City of Escondido, and Lucas v. the South Carolina Coastal Council. Beginning with an overview of the 1987 trilogy of cases, the video turns to a brief discussion of the cases and their rulings. Finally, the majority of the video is devoted to a discussion of the significance of the cases with a major emphasis on the Lucas case. A studio audience of planners poses questions to the panelists throughout the discussion. The second video is a discussion of the Lucas case and its implications for environmental and coastal zone management. David Bower of the University of North Carolina was the producer of this video. The workbook accompanying the AICP Video Education tape consists of a series of discussions of the cases and their relevance for planners.

Social Capital and Sustainability. (One-half-inch VHS videotape). 22 minutes . Produced by Iowa State University with cooperation with Western SARE/ACE Program and the North Central Regional Center for Rural Development. This tape shows how sustainability in agriculture depends on social and environmental resources. Demonstrates how social capital and community are critical for managing agricultural change. Made for general audiences.

Subdivisions: A Local Dilemma. (One Half-Inch VHS Videotape) Produced by: Rural

Technical Assistance Program, Montana State University, Bozeman. June 30, 1985. This is a discussion by Montana planners, developers and others involved in land development and regulations. It emphasizes problems associated with subdivision development as a result of non-enforcement of regulations and use of exemptions. It also stresses the need for planned development in order to prevent local taxpayers from paying the costs associated with land development and discusses various ways that improvements can be financed.

The Role and Responsibility of the Planning Commissioner. (VHS Videotape -- 40 minutes) Produced by: Municipal Video Project with Pappas Teleproductions Date: 1988 Contents: An introduction to the job of the planning commissioner (planning board member). A useful tool for training new planning board members on their roles and responsibilities in the planning process. Points out the relationship between the planning board and various elected bodies. Discusses the importance of the comprehensive plan and its various elements such as the land use plan and the transportation plan. Also discusses tools to implement the comprehensive plan such as zoning, subdivision regulations, capital improvements planning, and planned unit developments. Points out the importance of public participation in the planning process. Emphasis on California planning law. Useful "refresher course" for experienced planning boards. The video focus is on urban planning.

Voluntary Techniques for Land Conservation. (A set of 3 cassette Tapes) Produced by: Bruce Bugbee and Associates for the Office of Community Development, Missoula County Date: May 30, 1986. (The workshop materials were presented primarily by Bruce Bugbee, Planning Consultant, Missoula).

Tape 1: Introduction by Ann Mary Dussault, Missoula County Commissioner -- The Need for Voluntary Techniques for Land Conservation in Missoula County. Film -- "For the Common Good." Comparison of the Voluntary and Regulatory Techniques -- Explanation of Various Techniques -- Explanation of Various Techniques Used.

Tape 2: Potential for Use of Voluntary Techniques in Missoula County -- Discussion of "Inventory of Conservation Resources of Missoula County" and how that information can be used to preserve lands of public importance.

Tape 3: Discussion of Specific Voluntary Techniques for Conservation of Open Space -- Missoula County Examples; Methods of Acquiring Open Space; Methods of Compensating Private Property Owners; Explanation of How Tax Benefits Work.

Water/Sewer Finance for Local Government Officials. (A Set of 6 VHS tapes). Produced by: Montana Department of Commerce, Community Technical Assistance Program with assistance by the MSU Film Department. Additional financial support provided by the

Department of Natural Resources, Water Development Bureau. June, 1983. This is a layperson's basic introduction to planning and financing water and sewer systems. It stresses options to solve financing problems.

Why Plan: A Citizen's Introduction To The Benefits of Community And Rural Planning in Montana. (One-Half Inch VHS Videotape -- 30 minutes) Produced by CTAP with Continental Productions. November 1988. A layperson's introduction to the benefits of community and rural planning with a Montana focus. Designed for both city and rural audiences in Montana. Explains the origin of planning. Concentrates on the benefits of planning - public safety, lower taxes, increased private property values, more beautiful environment, enhanced wildlife habitat, consumer protection for real estate buyers, etc. Explains the disastrous consequences of "not planning." Useful for community meetings about planning and for training new local government officials and staff on planning. When budget cutting time rolls around, policy makers sometimes overlook the real benefits of planning; this video may help refresh their memory.

Why Plan? A Primer For the Concerned Citizen. (One Half-Inch VHS Videotape -- 30 minutes) Produced by Municipal Video Project with Pappas Teleproductions. October 1987. An overview of the planning process. This video shows the importance of planning, who and what is involved in the process, and the consequences of not planning. It includes a brief history of planning in the United States. It also includes comments from a noted land use attorney, several planning directors, and the executive director of the League of California Cities. The video is useful as an introduction to the planning process -- for new planning board members and members of the governing body, or citizens. The video is targeted for urban area audiences rather than rural area audiences.

F. OTHER BOOKS ABOUT PLANNING

The Citizen's Guide to Planning, Herbert H. Smith, Planner Press, APA, Washington D.C., Chicago, Ill, 1993.

Customer Service in Local Government, Bruce W. McClendon, Planners Press, APA, Washington D.C., Chicago, Ill, 1992.

The Job of the Planning Commissioner, 3rd Edition, Albert Solnit, Planners Press, APA, Washington, D.C., Chicago, Ill, 1987.

Land Use and the Constitution: Principles for Planning Practice, ed. By Brian W. Blaesser and Alan C. Weinstein, Planners Press, APA, Washington D.C. and Chicago, Ill., 1989.

Planning America's Communities, Herbert Smith, Planners Press, APA. Washington D.C., Chicago, Ill., 1991.

The Planning Commissioners Guide, David J. Allor, Planners Press, APA, Washington,

D.C., Chicago, Ill., 1984.

Rural Environmental Planning for Sustainable Communities, Sargent, Lusk, Rivera, and Varela, Island Press, Washington, D.C., 1991.

G. INTERNET SITES THAT MIGHT BE USEFUL

Community Technical Assistance Program list of publications
http://www.mt.gov/commerce/ctap/PUBLICAT.HTM

American Planning Association site
htpp://www.planning.org/

Bureau of Land Management(BLM)Public Land Survey System (township, range and section)
http://nris.msl.mt.gov/ftp/montana/blm/plss.html

BLM Public Land Ownership System
http://nris.msl.mt.gov//tp/montana/blm/owners.html

The Community Information Exchange - a directory of community sites
http:www.commininfoexch.org/related.htm

The Empowerment/ Enterprise Communities (EZ/EC) Program site, a Presidential Initiative implemented to revitalize distressed communities in the U.S.
http://www.ezec.gov/

Geographic Information and Analysis Center
http://sun1.giac.montana.edu/giac.html

The International Society of City and Regional Planners
http://www.soc.titech.ac.jp/titsoc/higuchi-lab/isocarp/index.html

Mapquest site
http://www.mapquest.com/cgi-bin/mq

Montana Department of Natural Resources Water Rights Page
http://moe.dnr.mt.gov/data.html#gisdata
(a listing of filed water rights in the state)

Montana Local Government GIS Coalition
http://sun1.giac.montana.edu/mlggc.html

Natural Resource Information System - the Montana State Library

File Transfer Protocol: ftp:nris.met.gov.pub/

GIS site: http://nris.msl.mt.gov/gis/gis.html

GIS data for Montana: http://nris.msl.mt.gov/gis/datalist.html

Montana maps site: http://nris.msl.mt.gov/gis/mtmaps.html

NRIS data request form: http://nris.msl.mt.gov/gis/request

State GIS data centers: http: http//www.nris.msl.mt.gov/gis/other.html

On line Planner Forum
http:///www.asu.edu/caed/onlineplanner

The Planning Commissioners Journal
http:www.webcom.com/~pcj/

Planning information on the Internet
http://cafm2.lanl.gov/~jmcdermo/planning/planhome.html

Planning jobs, list
http://www.arch.buffalo.edu/pairc/employment_planning_jobs.html

Sustainable Communities Network
http://www.sustainable.org

The Topologically Encoding and Referencing System (TIGER) covers all of the U.S. with basic GIS data, such as roads, rivers, political boundaries, census data, streets and addresses.
http://www.census.gov/ftp/pub/geo/www/tiger

The University of California at Berkeley Environmental Design Library - a directory of Internet Planning Resources, and a source for a variety of planning and community indices, books and organizations.
http://www.lib.berkeley.edu/ENVI/cityweb.html

Urban and Regional Planners
http://peter.itsc.state.md.US:81/ooh/urban_an.htm

Urban planning site
http://www.yahoo.com/Social_Science/Urban_Studies/Urban Planning/

Usenet Groups:
alt.planning.urban: Popular discussion site for planning discussions.

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